

Thomas M. McInerney SBN 162055  
tmm@ogletree.com  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
Steuart Tower, Suite 1300  
One Market Plaza  
San Francisco, CA 94105  
Telephone: 415.442.4810  
Facsimile: 415.442.4870

Attorneys for Defendant  
BERKELEY FARMS, LLC (erroneously sued  
herein as BERKELEY FARMS INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CLINTON HENDRIX,

Plaintiff,

V.

BERKELEY FARMS INC., AND DEAN FOODS INC., TEAMSTERS 853, and Does 1-100,

### Defendants.

|Case No.

**NOTICE OF REMOVAL OF CIVIL  
ACTION**

Complaint Filed: March 5, 2018  
Trial Date: None set

1                   **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2                   PLEASE TAKE NOTICE THAT defendant Berkeley Farms, LLC (erroneously sued herein  
 3 as Berkeley Farms, Inc.) (“Berkeley Farms”) hereby removes the above-captioned action from the  
 4 Superior Court of the State of California for the County of Alameda to the United States District  
 5 Court for the Northern District of California. This matter is a civil action of which this Court has  
 6 original jurisdiction under 28 U.S.C. §§ 1331, and is one which may be removed to this Court by  
 7 defendant Berkeley Farms pursuant to the provisions of 28 U.S.C. § 1441(a) and (c) in that it arises  
 8 under 29 U.S.C. § 185(a), Section 301 of the Labor Management Relations Act (“section 301”). In  
 9 support of this removal, Berkeley Farms states as follows:

10                   **THE STATE COURT ACTION**

11                  1.       On July 14, 2014, plaintiff Clinton Hendrix filed a civil action in the Superior Court  
 12 of the State of California for the County of Alameda, entitled *Clinton Hendrix v. Berkeley Farms*  
*Inc. and Dean Foods Inc. and Does 1-100*, bearing Case No. HG14732618 (“*Hendrix I*”). On July  
 14, 2014, the agent for service of process for defendant Berkeley Farms was served with the  
 15 Complaint and related documents. The Complaint in *Hendrix I* asserted three causes of action for:  
 16 (1) Breach of Employment Contract; (2) Intentional Infliction of Emotional Distress (“IIED”); and,  
 17 (3) Breach of the Covenant of Good Faith and Fair Dealing. All of plaintiff’s causes of action were  
 18 based on his allegations that defendants violated the collective bargaining agreement.

19                  2.       On August 13, 2014, defendant Berkeley Farms filed a Notice of Removal of this  
 20 Action to this Court and the action was assigned to the Honorable Vince Chhabria with Case No.  
 21 14-cv-03659. On August 20, 2014, defendant Berkeley Farms filed a motion to dismiss pursuant to  
 22 Rule 12(b)(6) of the Federal Rules of Civil Procedure and based its motion on several grounds,  
 23 including the fact his claims were preempted by section 301, that his claims were barred by his  
 24 failure to exhaust contractual and administrative remedies, and his claims were barred by the  
 25 applicable statutes of limitation. In addition, the motion asserted that Hendrix had failed to plead  
 26 facts sufficient to support his IIED claim, and that this IIED claim was barred by the exclusivity of  
 27 workers’ compensation.

28                  3.       On September 16, 2014, after Hendrix had failed to file a response by the initial

1 deadline of September 3, Judge Chhabria directed plaintiff to file his response within seven days.  
 2 Hendrix did not. Accordingly, at a hearing on September 25, 2014, at which Hendrix did not  
 3 appear, his case was dismissed with prejudice.

4       4. On January 26, 2016, Hendrix filed in this Court what he styled as a “Request to  
 5 Reopen Case,” raising claims that he suffered from medical conditions and raising accusations  
 6 against a prior legal counsel. On February 3, 2016, Judge Chhabria denied this motion in an order  
 7 that provided that “[n]o further filings will be entertained in this closed case.” A true and correct  
 8 copy of the Complaint and all related documents filed in *Hendrix I* are attached as “Ex. A” to this  
 9 Notice of Removal [“Notice”].

10     5. On February 13, 2018, Hendrix filed a second legal action in this Court, styled as  
 11 *Teamsters 853, Clinton Hendrix v. Berkeley Farms Inc., Dean Foods*, United States District Court  
 12 for the Northern District of California, Case No. 18-cv-00935 (“*Hendrix II*”). The Complaint and  
 13 Summons in *Hendrix II* were never served on defendant Berkeley Farms. *Hendrix II* alleged  
 14 similar claims as *Hendrix I*, including for breach of contract and breach of the implied covenant of  
 15 good faith and fair dealing. *Hendrix II* was initially assigned to Magistrate Maria-Elena James. As  
 16 no one consented to the jurisdiction of the U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c),  
 17 the matter was reassigned to the Honorable Haywood S. Gilliam, Jr. with a recommendation from  
 18 Judge James that it be dismissed with prejudice. This recommendation was based on several  
 19 grounds, including the fact that no federal claims were stated, that no state law claims were stated,  
 20 that no claims were asserted against Dean Foods, and *res judicata* from *Hendrix I*. On March 9,  
 21 2018, Judge Gilliam adopted this recommended and dismissed this case without leave to amend. A  
 22 true and correct copy of the Complaint and all related documents filed in *Hendrix II* are attached as  
 23 “Ex. B” to this Notice.

24     6. On March 5, 2018, Hendrix filed his third lawsuit, this time in Alameda Superior  
 25 Court, styled as *Clinton Hendrix v. Berkeley Farms, Inc., Dean Foods Inc., Teamster 853, and*  
 26 *Does 1-100*, Alameda Superior Court Case No. RG18895498 (“*Hendrix III*”). In the *Hendrix III*  
 27 complaint Hendrix raises the same claims as *Hendrix I* and *Hendrix II*, including breach of  
 28 contract, breach of the implied covenant of good faith and fair dealing, and IIED. He further

1 alleges facts indicating he was a member of a union and was subject to a collective bargaining  
 2 agreement, but that his termination related to his operation of a forklift was in violation of this  
 3 agreement. A true and correct copy of the Complaint and all related documents received by  
 4 defendant Berkeley Farms in *Hendrix III* are attached as "Ex. C" to this Notice.

5           **THIS COURT HAS ORIGINAL JURISDICTION PURSUANT TO**  
 6           **SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT**

7       7. Plaintiff was member of the International Brotherhood of Teamsters Local Union  
 8 853 ("Union") and his employment was subject to the terms of the Union's collective bargaining  
 9 agreement ("CBA") with Berkeley Farms. (*Hendrix III* Complaint, Exhibit C, ¶¶ 1-32). Plaintiff's  
 10 state law claims are premised on the terms of that CBA and the alleged breach by defendants of the  
 11 CBA.

12       8. Section 301(a) of the Labor Management Relations Act ("LMRA") ("Section 301"),  
 13 29 U.S.C. § 185(a), vests jurisdiction over claims relating to breaches of collective bargaining  
 14 agreements in federal courts, providing in pertinent part:

15           Suits for violation of contracts between an employer and a labor organization representing  
 16 employees in an industry affecting commerce as defined in this Act, or between any such  
 17 labor organizations, may be brought in any district court of the United States having  
 18 jurisdiction of the parties, without respect to the amount in controversy or without regard to  
 19 the citizenship of the parties.

20       9. Section 301 has been interpreted and applied to compel preemption of state law  
 21 claims to enforce collective bargaining agreements. *Avco Corp. v. Aero Lodge No. 735*, 390 U.S.  
 22 557, 560 (1968). Importantly, "[a]lthough the language of § 301 is limited to '[s]uits for violation  
 23 of contracts,' the Supreme Court has expanded § 301 preemption to include cases the resolution of  
 24 which 'is substantially dependent upon analysis of the terms of [a collective bargaining  
 25 agreement.]'" *Navarro v. Servisair, LLC*, C 08-02716 MHP, 2008 WL 3842984 (N.D. Cal. Aug.  
 26 14, 2008), citing *Allis Chalmers v. Lueck*, 471 U.S. 202, 220 (1985). "[T]he preemptive force of §  
 27 301 is so powerful as to displace entirely any state cause of action for violation of contracts  
 28 between an employer and a labor organization." *Franchise Tax Board of California v.  
 Construction Laborers Vacation Trust for S. Ca.*, 463 U.S. 1, 23 (1983).

1       10. Removal is proper where federal law completely preempts and supplants state law.  
 2 *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58, 64 (1987). Section 301 completely  
 3 preempts all state law actions that require the interpretation of a collective bargaining agreement,  
 4 even if those actions are not characterized as § 301 actions. *Stallcop v. Kaiser Foundation*  
 5 *Hospitals*, 820 F.2d 1044, 1049 (9th Cir. 1987) (plaintiff's failure to mention collective bargaining  
 6 agreement in complaint is not dispositive; court will investigate and find preemption if complaint  
 7 actually raises a Section 301 claim); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189, 191  
 8 (9th Cir. 1983) (when a state law claim actually arises under federal law, the court will re-  
 9 characterize it accordingly to uphold removal). Thus, "if a state law claim is completely preempted  
 10 by a federal statute such as Section 301, the state law cause of action necessarily becomes a federal  
 11 one and can be removed." *Milne Employee's Ass'n v. Sun Carriers*, 960 F.2d 1401, 1406 (9th Cir.  
 12 1991), *cert. denied*, 113 S.Ct. 2927 (1993).

13       11. Plaintiff's breach of contract and breach of the covenant of good faith and fair  
 14 dealing causes of action are based solely on the allegation that defendants violated the CBA.  
 15 Indeed, the complaint specifically quotes from the CBA and asserts that it was breached.  
 16 Accordingly, both of these claims necessarily involve interpretation of the terms of the CBA and  
 17 are preempted by Section 301 of the LMRA.

18       12. Plaintiff's emotional distress claim is also preempted by Section 301 because it  
 19 stems from violation of the CBA. The Ninth Circuit has held that because a plaintiff's "emotional  
 20 distress claim arises out of her discharge and the defendant's conduct in the investigation leading  
 21 up to it [ . . . , a] determination of the validity of her emotional distress claim will require us to  
 22 decide whether her discharge was justified under the terms of the collective bargaining agreement."  
 23 Therefore, the Court will have to interpret the CBA to decide the claim. *Newberry v. Pacific*  
 24 *Racing Ass'n.*, 854 F.2d 1142, 1149-50 (9th Cir. 1988) (emotional distress claim preempted by  
 25 section 301); *see also Scott v. Machinists Automotive Trades Dist. Lodge No. 190*, 827 F.2d 589,  
 26 594 (9th Cir. 1987) (emotional distress claim preempted under section 301 when arising out of  
 27 employee's discharge or conduct of employer in investigatory proceedings preceding discharge).  
 28 Plaintiff's emotional distress claim therefore cannot be decided without interpreting or analyzing

the terms of the agreement.

13. As such, this action is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. §§ 1331, and is one that may be removed by Berkeley Farms pursuant to 28 U.S.C. § 1441(a) and (b).

14. The Complaint and Summons in Hendrix III was served on defendant Berkeley Farms on or about March 21, 2018. Berkeley Farms understands that the was served with the complaint and summons, although it also understands that defendant Dean Foods Company (erroneously sued as Dean Foods Inc.) was not served. Although Dean Foods Company has not been served and, therefore, does not need to consent to this removal, it has indicated to the undersigned that it does so consent. In addition, on April 19, 2018, an attorney representing the Union confirmed in a telephone call with the undersigned that the Union also consented to this removal.

## **SUPPLEMENTAL JURISDICTION**

15. To the extent plaintiff's intentional infliction of emotional distress and breach of covenant of good faith and fair dealing claims are not completely preempted and are thus not removable to federal court, this Court may exercise supplemental jurisdiction over those claims. All of plaintiff's claims in the Complaint arise out of the plaintiff's grievances against defendants and arise out of the alleged termination of his employment. Thus, these claims arise out of the same nucleus of operative facts. Since this Court has jurisdiction over the federal claims related to this case or controversy, it also has supplemental jurisdiction over any state law claims which form a part of the same case or controversy. 28 U.S.C. § 1337(a).

# **INTRADISTRICT ASSIGNMENT**

16. Pursuant to Local Rule 3-2(d), Removal and Intradistrict Assignment to the Oakland or San Francisco divisions of this Court is proper because the alleged acts and occurrences arose in the County of Alameda. Defendant will be filing an administrative motion following removal indicating that this case is related to a prior action involving the same parties that was adjudged by the Honorable Vince Chhabria, and this motion will ask for assignment of this case to Judge Chhabria.

1 WHEREFORE, defendant Berkeley Farms, LLC hereby removes the above action to this  
2 Court.

3 DATED: April 20, 2018

4 OGLETREE, DEAKINS, NASH, SMOAK &  
5 STEWART, P.C.

6 By: /s/ Thomas M. McInerney  
7 Thomas M. McInerney  
8 Attorneys for Defendant  
9 BERKELEY FARMS, LLC (erroneously  
10 sued herein as BERKELEY FARMS INC.)  
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## Exhibit A

7/14/14

213

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

Berkley Farms Inc., Dean Foods Inc and DOES 1-100  
BERKELEY FARMS

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Clinton Hendrix

\*12740531\*

<small>FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)</small> <b>F.I.D.O.R.S.E.D.</b> <b>FILED</b> <b>ALAMEDA COUNTY</b> <b>JUL 14 2014</b> <b>CLERK OF THE SUPERIOR COURT</b> By: <u>Z - C D Z</u> <small>DEPUTY</small>
--

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

California Superior Court, Hayward Branch, 24405 Amador Street  
Hayward CA 94544CASE NUMBER:  
(Número del caso):**HG14732618**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kjell C. Bomark-Noel, Esq., 11854 Dublin Blvd, Dublin CA 94568

DATE:  
(Fecha) JUL 14 2014LEAH T. WILSON  
EXECUTIVE OFFICER/CLERKClerk, by  
(Secretario)Deputy  
(Adjunto)(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

- on behalf of (specify):

Berkeley Farms, Inc.

under:  CCP 416.10 (corporation)  
 CCP 416.20 (defunct corporation)  
 CCP 416.40 (association or partnership)  
 CCP 416.60 (minor)  
 CCP 416.70 (conservatee)  
 CCP 416.90 (authorized person)

- other (specify):

4.  by personal delivery on (date):

7/14/14



**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

Berkeley Farms, Inc., Dean Foods Inc and DOES 1-100  
BERKELEY FARMS

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
Clinton Hendrix

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)	
<i>ENDORSED</i>	
<b>FILED</b>	
<b>ALAMEDA COUNTY</b>	
JUL 14 2014	
CLERK OF THE SUPERIOR COURT	
By:	<i>LCDZ</i>
	DEPUTY

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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*AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

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The name and address of the court is:

(El nombre y dirección de la corte es):

California Superior Court, Hayward Branch, 24405 Amador Street  
Hayward CA 94544

CASE NUMBER:

(Número del Caso):

**HG14732618**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kjell C. Bomark-Noel, Esq., 11854 Dublin Blvd, Dublin CA 94568

DATE: JUL 14 2014 LEAH T. WILSON Clerk, by  
(Fecha) EXECUTIVE OFFICER/CLERK (Secretario) *LCDZ* . Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

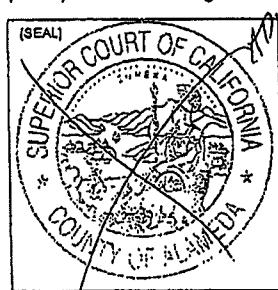
1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

*Berkeley Farms, Inc.*

under:  CCP 416.10 (corporation)  
 CCP 416.20 (defunct corporation)  
 CCP 416.40 (association or partnership)  
 other (specify):

CCP 416.60 (minor)  
 CCP 416.70 (conservatee)  
 CCP 416.90 (authorized person)



1 Kjell C. Bomark-Noel; SBN 147494  
2 Law Offices of Bomark-Noel  
3 11854 Dublin Blvd  
4 Dublin, CA 94568  
5 510-325-6226  
6 Attorney for Defendants

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 14 2014

CLERK OF THE SUPERIOR COURT  
By: ANGEL LOGAN  
DEPUTY

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SUPERIOR COURTOF THE STATE OF CALIFORNIA

9

COUNTY OF ALAMEDA

10

Unlimited Jurisdiction

11

CLINTON HENDRIX

Case No HG 14732618

12

Plaintiff

Complaint for unlawful termination in  
violation of contract, harassment and  
infliction of emotional distress

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v  
BERKELEY FARMS INC  
And DEAN FOODS INC.  
And Does 1-100

14

Defendants

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RIGHT TO SUE LETTER

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On November 5, 2013, The State of California, Department of Fair Employment & Housing issued it's final Right to sue letter. See attached **Exhibit A**. Which is a true and correct copy of the Right to Sue Letter.

Comes now Plaintiff Clinton Hendrix hereinafter, Plaintiff, with a civil complaint against Berkeley Farms. Berkeley Farms is a corporation doing business in the State of California County of Alameda with address at 25500 Clawiter Rd, Hayward CA94545. Dean Foods Inc is Berkeley Farms parent company based on the paychecks received by Plaintiff in the past. Herein after Berkeley Farms and Dean Foods Inc are combined as Defendants.

Therefore, venue is Alameda County Superior Court. The Does 1-100 are sued as

Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

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1 fictional entities, and when and if true names of persons or corporations are discovered  
2 those names will be substituted for the Does.

3 FACTS COMMON TO ALL CAUSES OF ACTION

4 1. Clinton Hendrix, hereinafter Plaintiff, had previously a grievance against Supervisor  
5 Peter Cheung a supervisor with Berkeley Farms. Plaintiff had previously filed two  
6 grievances with the Human Resources Manager at Berkeley Farms. One grievance was  
7 about an unsafe forklift incident in where the forklift lost its counterweight, something  
8 the plant manager and the safety-manager blamed in part on Plaintiff. Plaintiff had prior  
9 to the incident always operated the forklift in a safe and efficient manner. Plaintiff  
10 maintains that management unjustifiably blamed Plaintiff on something that was out of  
11 his control. The bolts holding the counterweight broke and caused Plaintiff to have a  
12 moving accident. The incident created in Plaintiff stress and anxiety. Into this situation  
13 and after Plaintiff was further harassed by Supervisor Chung, a severe anxiety developed  
14 in Plaintiff.

15 2. 1) Plaintiff filed a grievance in writing in where he stated, that he was harassed by a  
16 supervisors at Berkeley Farms. One allegation was that Plaintiff operated a fork-lift in an  
17 unsafe manner, something in which Plaintiff denies; and another statement by Plaintiff  
18 was one of harassment against Supervisor Peter Cheung in which eventually forced  
19 Plaintiff to resign under protest by calling over the phone in frustation and stating "I.  
20 Quit".

21 3. None of these written complaints of harassment were addressed by Berkeley Farms in  
22 compliance with Article 26 of the Corporation's employment agreement to with "  
23 Settlement of Disputes." As part of the harassment Peter Cheung had lifted his arm in a  
24 threatening manner such that Mr. Hendrix felt threatened by Mr. Cheung's demeanor,  
25 posture and verbalization.

26 4. The anxiety inflicted on Plaintiff by a Berkeley Farms Supervisor's behavior over the  
27 alleged forklift incident and over the threatening behavior by supervisor Cheung required

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

Mr. Hendrix to seek medical help and take Family Medical leave.

2 5. In fact Berkeley Farm knew that Mr. Hendrix was in need of professional counseling  
3 based on the anxiety caused by Peter Cheung and managements in their handling of the  
4 forklift incident and harrassment. See attached **Exhibit B** which is a true and correct  
5 copy of a document received by Plaintiff prior to his termination.

6 6. Berkeley Farms claims That Mr. Hendrix called and said "I quit".

7   7. Nobody denies that Plaintiff showed up to work the very next day and clocked in as  
8   normal and went to work. In fact, he showed the whole world by his action that he had  
9   not quit when he called in and stated "I quit" over the phone. Plaintiff was clearly  
10   venting his frustration, but by his act and actions, he clearly showed he had not quit by  
11   clocking in and starting to work.

12 8. Berkeley Farms never followed Article 26 of its "Settlement of Disputes", but merely  
13 terminated Mr. Hendrix in a manner not consistent with its own employment agreement.

#### **First cause of Action**

## **(Breach of Employment Contract)**

16 9. The allegations set forth in Paragraphs 1 through 9 are re-alleged and incorporated  
17 herein by reference.

18 Stated in Article 26 of the “employment agreement” an employee can expect  
19 grievances to be handled in a fair and equitable manner.

## ARTICLE 26, SETTLEMENT OF DISPUTES

21 11. "Section 1. Step 1 - All grievances of employees and disputes relating to the  
22 application, and enforcement of this Agreement, shall be referred initially by the  
23 employee and or shop steward to the employees' immediate supervisor or manager."  
24 12, "Step 2 - if after five (5)business days the matter is not settled under the foregoing  
25 procedure, the matter shall be referred in writing by the employee and or shop steward to  
26 the Plant Manager, or Distribution Manager and the Human Resource Manager. The  
27 written referral to Step 2 shall state the nature of the dispute and the remedy sought using

**Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress**

1 the agreed upon form with copies served on the parties involved. Grievances filed under  
2 Article 5 shall be filed at Step 2. The Union may be represented by any of its officers,  
3 agents or other authorized persons, and the employer may be represented by its  
4 management personnel or other persons. The Step 2 grievance meeting shall be held  
5 within five (5) days of written notice of the referral, unless mutually agreed otherwise.  
6 Every effort shall be made to resolve differences at this level. Within five (5) days after  
7 the Step 2 grievance meeting the responding party shall serve the grieving party with a  
8 written response to the grievance, and if denied, setting forth the reasons.”

9 13. “Section 2. In the event grievances or disputes are not settled within five (5) days  
10 under the foregoing procedure, the matter may be referred to a Board of Adjustment. All  
11 such unresolved issues shall be in writing with copies to be served on the parties  
12 involved. The Union may be represented by any of its officers, agents or other authorized  
13 persons, and the Employer may be represented by its management personnel or other  
14 authorized persons. Every effort shall be made to resolve differences at this level.  
15 Section 3. The Board of Adjustment shall be composed of two (2) representatives of the  
16 Company and two (2) representatives of the Union. No such representative shall be a  
17 direct employee of the Company or of the Union involved in the dispute. A Chairman and  
18 Secretary shall be designated from among the panel.”

19 ///

20 14. During the entire course of plaintiff’s employment with defendants, there existed an  
21 express and implied-in-fact employment contract between plaintiff and defendants that, at  
22 the time of plaintiff’s discharge, included but was not limited to, the following terms and  
23 conditions:

24 A. Plaintiff would be able to continue his employment with defendant indefinitely as long  
25 as he carried out his duties in a proper and competent manner and paid his union dues;  
26 B. Plaintiff would not be demoted, discharged, or otherwise disciplined, nor would  
27 plaintiff’s job functions be reassigned for other than good cause .....”.

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1       15. The alleged unsafe forklift operation should have resulted in retraining in company  
2 adopted safe practices and not leave Plaintiff with stress and anxiety. Improper forklift  
3 procedure if at all, should not have resulted in termination, but in retraining. The forklift  
4 "Counterweight" falling off shows unsafe equipment and not the ultimate responsibility  
5 of Plaintiff. It may be of note that Plaintiff has operated forklifts at Berkeley Farms for  
6 several yeas without incidents.

7       16. This employment contract was evidenced by various written documents,  
8 commendations, oral representations to plaintiff by defendants' agents and employees,  
9 and the parties' entire course of conduct, including the following as evidence by the  
10 employment handbook and Article 26 which Heading is "settlement of disputes".

11      17. A. Defendants' written personnel policies and discipline procedures are as stated in  
12 Article 26 Settlement of Disputes; and should thus have been followed.

13      18. B. The existence of an established policy with the defendant company, which was  
14 known to and relied on by plaintiff, that an employee such as plaintiff, who had  
15 performed service for Berkeley Farms for six years as a good and faithful employee,  
16 would have secure employment with defendants; that an employee such as plaintiff would  
17 not be discharged without good and sufficient cause and be afforded retraining and  
18 counseling when needed; that an employee such as plaintiff with a grievance or complaint  
19 lodged against him, would be provided a meaningful opportunity to respond and improve;  
20 and that an employee such as plaintiff would not be demoted, discharged, or disciplined  
21 without good and sufficient cause and would not otherwise have his job functions taken  
22 away or reassigned.

23      19. C. Throughout his employment, plaintiff was told by his superiors, that he was  
24 doing a satisfactory job except by Supervisor Peter Cheung. Plaintiff worked there for  
25 six years until Supervisor Cheung gave Plaintiff grief.

26      20. As a result of the above representations, plaintiff came reasonably to expect and to  
27 rely on the promise of job security and good and fair treatment. Such statements and acts

1 by defendants communicated to plaintiff the idea that he had performed satisfactorily  
2 until his interaction with Supervisor Cheung which cost Plaintiff great anxiety and need  
3 of medical counseling. Plaintiff in good faith relied on these representations of good and  
4 fair treatment and believed them to be true.

5 21. Plaintiff's reliance on, belief in, and acceptance in good faith of all the assurances,  
6 promises, and representations as listed in the preceding paragraphs led him to believe that  
7 his employment was secure and that there existed a contract of continuous employment  
8 with defendants. As independent consideration, in addition to performing his regular  
9 duties as an employee of defendant, plaintiff refrained from seeking other employment  
10 and pursuing other career opportunities while he was able to be re-trained without  
11 suffering from the stress and anxiety and there was still a need of his skills.

12 22.. Plaintiff understood and duly performed all conditions of the contract to be  
13 performed by him.

14 23. Plaintiff has at all times been ready, willing, and able to perform and has offered  
15 to perform all the conditions of this contract to be performed by him.

16 27. Despite the representations made to Plaintiff and the reliance Plaintiff placed on  
17 them, Defendants failed to carry out their responsibilities under the terms of the  
18 employment contract and breached the contract in the following ways:

19 By not following the Union Grievance Procedures and The employment Handbook.  
20 Plaintiff should have received counseling as the stress created in Plaintiff were in fact  
21 caused directly and indirectly by Defendants. Plaintiff should have been given any  
22 necessary forklift retraining to company standards if management decided that was  
23 necessary. The failure of Defendants to make Plaintiff understand that the  
24 "Counterweight" incident was beyond Plaintiff's control would have alleviated some  
25 anxiety and stress.

26 ///

27 ///

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

The company and Defendants failed by:

2 28. A. Subjecting plaintiff to different standards from those set for other employees;

### **B. Terminating plaintiff's employment without cause and for reasons that have**

4 nothing to do with legitimate business justification, despite the past (Six Years)

5 satisfactory job performance.

6 30. C Failing to follow their own written personnel policies or to apply the same

7 personnel policies to plaintiff that they apply to other employees.

8 31. D. Failing and refusing to place plaintiff in alternative positions while he had stress  
9 and counseling issues that were available and for which plaintiff was qualified.

10 32. As a proximate result of defendants' breach, plaintiff has suffered and continues to  
11 suffer substantial losses in earnings, bonuses, and other employment benefits that he  
12 would have received had defendants not breached said agreement, including but not  
13 limited to expenses incurred in obtaining substitute employment, all to his damage in an  
14 amount according to proof.

## SECOND CAUSE OF ACTION

**(Intentional Infliction of Emotional Distress)**

18 33. The allegations set forth in Paragraphs 1 through 32 are re-alleged and incorporated  
19 herein by reference.

20 34. Defendants knew of Plaintiff's fragile emotional state based on the harassment and  
21 the forklift incident.

22 35. Defendants through their management and supervisors showed a callous disregard  
23 for Plaintiff's emotional state and intentionally inflicted anxiety on Plaintiff.

24 | Wherefore Plaintiff prays for Judgment as stated below.

25

26 //

27 | //

**28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress**

## THIRD CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing)

4 36. The allegations set forth in Paragraphs 1 through 35 are re-alleged and incorporated  
5 herein by reference.

6 37. Plaintiff's employment agreement with defendants contained an implied covenant of  
7 good faith and fair dealing by which defendants, and each of them, promised to give full  
8 cooperation to plaintiff in his employment performance and to refrain from doing any act  
9 that would prevent or impede plaintiff from performing all conditions of his employment  
10 or any act that would prevent or impede plaintiff's enjoyment of the fruits of his  
11 employment. Specifically, the covenant of good faith and fair dealing required defendants  
12 to fairly, honestly, and reasonably perform the terms and conditions of the employment  
13 agreement.

14 38. Plaintiff, as an individual employee, was in an inherently unequal bargaining position  
15 in his dealings with Defendants. In addition, Plaintiff entrusted his entire livelihood to  
16 Defendants' willingness to perform their obligations under the terms of employment, and  
17 he suffering grave harm;. Defendants were aware of plaintiff's vulnerability in the regard  
18 and need of medical counseling due to the anxiety brought on by management and  
19 Supervisor Chung.

20 39. Defendants' termination of plaintiff's employment was wrongful, in bad faith,  
21 arbitrary, and unfair, and done to frustrate his enjoyment of the contract's actual benefits,  
22 in breach of said covenant, in that plaintiff was terminated on the pretext that just cause  
23 exited to discharge him, when defendants knew that there was no just cause. Plaintiff had  
24 not quit. Plaintiff was discharged for reasons extraneous to the employment agreement,  
25 without good or sufficient cause, in violation of defendants' policy to deal consistently  
26 and fairly with its employees, and for the purpose of frustrating plaintiff's enjoyment of  
27 the benefits of his employment with Defendants. Further, Defendants breached the

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 covenant by:

2 40. A. Subjecting plaintiff to different standards from those expected of employees;

3 41. B. Terminating plaintiff's employment without cause and for reasons that have  
nothing to do with legitimate business justification, despite satisfactory job performance.

4 42. C. Failing to follow their written personnel policies or to apply the same personnel  
policies to plaintiff that it applies to other employees.

5 43. D. Failing and refusing to place plaintiff in alternative positions that were available  
and for which plaintiff was qualified.

6

7

8

9 PRAYER FOR RELIEF

10 WHEREFORE, plaintiff prays for judgement against defendants as follows:

11 (1) To be reinstated with back-pay and seniority

12 (2) For compensatory damages including lost wages, lost employee benefits, bonuses,  
vacation benefits, and other special and general damages according to proof on each  
cause of action;

13 (3) For mental and emotional distress on the First and Second Cause of Action;

14 (4) For punitive damages on the First and Second Cause of Action;

15 (5) For an award of attorney fees on the First and Second Cause of Action;

16 (6) For an award of interest, including pre-judgment interest, at the legal rate;

17 (8) For an award to plaintiff of the costs of suit incurred herein on all causes of action;  
20 and

21 (9) For such other and further relief as this court deems just and proper.

22

23 Date: 7/4/2014

24 By Kjell C.  
25 Kjell Bomark-Noel  
26 Attorney for Plaintiff

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 Verification  
2

3 I Clinton Hendrix having reviewed the facts as stated in this complaint find them true and  
4 correct to the best of my memory and recollection. Under penalty of perjury under the laws  
5 of the State of California I affirm the facts true and correct to the best of my recollection  
6 and memory.

7 Date: 7/14/2014

8 By: 

Clinton Hendrix

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28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

Clinton Hendrix



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | Videophone 916-226-5285 | TTY 800-700-2320  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov) | email: [contact.center@dfch.ca.gov](mailto:contact.center@dfch.ca.gov)

GOVERNOR EDMUND G. BROWN JR.  
DIRECTOR PHYLLIS W. CHENG

Nov 05, 2013

Clinton Hendrix  
23 park circle  
sausalito, ca 94965

RE: Notice of Case Closure and Right to Sue  
DFEH Matter Number: 182381-77025-R  
Right to Sue: Hendrix / Berkeley Farms, Dunia xxx

Dear Clinton Hendrix:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Nov 05, 2013 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

Enclosures

cc: Berkeley Farms

**EXHIBIT A**

**Code of Ethics . Line****INVESTIGATION REPORT**

Report Date		9/26/2011
Caller Name		Clinton Hendrix
Location		Berkeley Farms
Department		Plant

**Summary of Caller's Allegation(s)/Concern(s):**

On June 6, 2011 production manager Peter Chuang embarrassed Hendrix in front of his peers when he chastised him for having a magazine in a production area.

Investigator:	Gennifer Tate
Case Manager:	Gennifer Tate

**Summary of Investigation Findings:**

Maintain separate & confidential investigation file containing notes, witness statements and any other documents obtained in support of your investigation.

Hendrix complained on June 6, 2011 to Marcy Davis, HR department that he had just been chastised by Peter Chuang for having a magazine in the work area and that he was embarrassed because Peter talked about it in front of other production workers. Hendrix told Davis that he was going to go home. She advised him to complete his shift. Hendrix later confronted Chuang again began swearing got angry and punched out before the end of his shift. He was suspended for one week for insubordination. When he returned from suspension he talked to the HR manager Gennifer Tate about the incident. Tate informed Hendrix that the incident was discussed with Chuang and that Chuang was counseled about the proper way to address disciplinary issues with employees. Hendrix said that he could no longer work with Chuang. Tate explained that Chuang will continue in his job as production manager but that any time Hendrix felt that Chuang was treating him disrespectfully, to advise either HR or the union. Hendrix then asked if he could take some time off to "get his head together" because he is not comfortable working with Chuang. He said he was feeling attacked and victimized. Tate asked Hendrix if he wanted to meet with Chuang, his shop steward and Tate to discuss how he was feeling. Hendrix refused so Tate suggested to Hendrix that he seek professional help to sort out his feelings and mentioned that he could use FMLA. Hendrix took a leave of absence of about 2 weeks. Hendrix filed a grievance with the union on August 23, 2011 over this matter. Tate spoke with Hendrix and again informed him that the incident had been discussed with Chuang. Hendrix again said he could not work with Chuang and wished that Chuang would leave him alone. On October 4, 2011 during a discussion with Tate and shop steward Ramon Castillo Hendrix stated that is obvious that someone talked to Chuang because Chuang avoids him.

**Action(s) Taken as a Result of Findings:** No action was taken. Issue was addressed with Chuang in June 2011.

**RESOLUTION INFORMATION**

Outcome:	<b>EXHIBIT B</b>
Comments where appropriate to do so.	No Investigation Necessary Policy/Procedure inquiry requiring no investigation.
	Complaint is Without Merit Complaint Report is as no merit.

1 Thomas M. McInerney CA Bar No. 162055  
2 tmm@ogletreedeakins.com  
3 Jill V. Cartwright CA Bar No. 260519  
4 jill.cartwright@ogletreedeakins.com  
5 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
6 Steuart Tower, Suite 1300  
7 One Market Plaza  
San Francisco, CA 94105  
Telephone: 415.442.4810  
Facsimile: 415.442.4870  
8  
9 Attorneys for Defendant  
BERKELEY FARMS, LLC  
10 (erroneously sued as BERKELEY FARMS INC.)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

12 CLINTON HENDRIX

13 Plaintiff,

14 v.

15 BERKELEY FARMS INC. and DEAN  
FOODS INC. and DOES 1-100.

## Defendants.

Case No.

**NOTICE OF REMOVAL OF CIVIL  
ACTION PURSUANT TO 28 U.S.C. §§ 1331,  
1367, 1441 AND 1446 BY DEFENDANT  
BERKELEY FARMS, LLC**

Complaint Filed: July 14, 2014  
Trial Date: Not Set

**1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 PLEASE TAKE NOTICE THAT defendant Berkeley Farms, LLC (erroneously sued herein  
3 as Berkeley Farms, Inc.) ("Berkeley Farms") hereby removes the above-captioned action from the  
4 Superior Court of the State of California for the County of Alameda to the United States District  
5 Court for the Northern District of California. This matter is a civil action of which this Court has  
6 original jurisdiction under 28 U.S.C. §§ 1331, and is one which may be removed to this Court by  
7 defendant Berkeley Farms pursuant to the provisions of 28 U.S.C. § 1441(a),(c) in that it arises  
8 under 29 U.S.C. § 185(a), Section 301 of the Labor Management Relations Act. In support of this  
9 removal, Berkeley Farms states as follows:

**10 THE STATE COURT ACTION**

11 1. On July 14, 2014, plaintiff Clinton Hendrix filed a civil action in the Superior Court  
12 of the State of California for the County of Alameda, entitled *Clinton Hendrix v. Berkeley Farms*  
13 *Inc. and Dean Foods Inc. and Does 1-100*, bearing Case No. HG14732618 (the "Complaint"). (A  
14 true and correct copy of the Complaint and all related documents are attached as "Ex. A" to this  
15 Notice of Removal ["Notice"].)

16 2. On July 14, 2014, the agent for service of process for defendant Berkeley Farms was  
17 served with the Complaint and related documents. All documents served on Berkeley Farms are  
18 attached to this Notice at Exhibit A.

19 3. The Complaint asserts three causes of action for: (1) Breach of Employment  
20 Contract; (2) Intentional Infliction of Emotional Distress; and, (3) Breach of the Covenant of Good  
21 Faith and Fair Dealing. All of plaintiff's causes of action are based on his allegations that  
22 defendants violated the collective bargaining agreement.

**23 THIS COURT HAS ORIGINAL JURISDICTION PURSUANT TO**  
**24 SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT**

25 4. Plaintiff was a member of a union and his employment was subject to the terms of a  
26 collective bargaining agreement. (Complaint ¶¶ 5, 13, 14A, 27, Ex. B). Plaintiff's state law claims  
27 are premised on the terms of that collective bargaining agreement and the alleged breach by  
28 defendants of the collective bargaining agreement. (Complaint ¶¶ 18, 10-32, 39-43).

1       5.     Section 301(a) of the Labor Management Relations Act (“LMRA”) (“Section 301”),  
2 29 U.S.C. § 185(a), vests jurisdiction over claims relating to breaches of collective bargaining  
3 agreements in federal courts, providing in pertinent part:

4              Suits for violation of contracts between an employer and a labor organization representing  
5 employees in an industry affecting commerce as defined in this Act, or between any such  
6 labor organizations, may be brought in any district court of the United States having  
jurisdiction of the parties, without respect to the amount in controversy or without regard to  
the citizenship of the parties.

7       6.     Section 301 has been interpreted and applied to compel preemption of state law  
8 claims to enforce collective bargaining agreements. *Avco Corp. v. Aero Lodge No. 735*, 390 U.S.  
9 557, 560 (1968). Importantly, “[a]lthough the language of § 301 is limited to ‘[s]uits for violation  
10 of contracts,’ the Supreme Court has expanded § 301 preemption to include cases the resolution of  
11 which ‘is substantially dependent upon analysis of the terms of [a collective bargaining  
12 agreement.]’” *Navarro v. Servisair, LLC*, C 08-02716 MHP, 2008 WL 3842984 (N.D. Cal. Aug.  
13 14, 2008), citing *Allis Chalmers v. Lueck*, 471 U.S. 202, 220 (1985). “[T]he preemptive force of §  
14 301 is so powerful as to displace entirely any state cause of action for violation of contracts  
15 between an employer and a labor organization.” *Franchise Tax Board of California v.  
16 Construction Laborers Vacation Trust for S. Ca.*, 463 U.S. 1, 23 (1983).

17       7.     Removal is proper where federal law completely preempts and supplants state law.  
18 *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58, 64 (1987). Section 301 completely  
19 preempts all state law actions that require the interpretation of a collective bargaining agreement,  
20 even if those actions are not characterized as § 301 actions. *Stallcop v. Kaiser Foundation  
21 Hospitals*, 820 F.2d 1044, 1049 (9th Cir. 1987) (plaintiff’s failure to mention collective bargaining  
22 agreement in complaint is not dispositive; court will investigate and find preemption if complaint  
23 actually raises a Section 301 claim); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189, 191  
24 (9th Cir. 1983) (when a state law claim actually arises under federal law, the court will  
25 recharacterize it accordingly to uphold removal). Thus, “if a state law claim is completely  
26 preempted by a federal statute such as Section 301, the state law cause of action necessarily  
27 becomes a federal one and can be removed.” *Milne Employee’s Ass’n v. Sun Carriers*, 960 F.2d  
28

<sup>1</sup> 1401, 1406 (9th Cir. 1991), cert. denied, 113 S.Ct. 2927 (1993).

2       8. Plaintiff's breach of contract and breach of the covenant of good faith and fair  
3 dealing causes of action are based solely on the allegation that defendants violated the collective  
4 bargaining agreement. Indeed, the complaint specifically quotes from the collective bargaining  
5 agreement and asserts that it was breached. Accordingly, both of these claims necessarily involve  
6 interpretation of the terms of the collective bargaining agreement and are preempted by Section  
7 301 of the Labor Management Relations Act.

8       9. Plaintiff's emotional distress claim is also preempted by Section 301 because it  
9 stems from violation of the collective bargaining agreement. The Ninth Circuit has held that  
10 because a plaintiff's "emotional distress claim arises out of her discharge and the defendant's  
11 conduct in the investigation leading up to it [ . . . , a] determination of the validity of her emotional  
12 distress claim will require us to decide whether her discharge was justified under the terms of the  
13 collective bargaining agreement." Therefore, the Court will have to interpret the collective  
14 bargaining agreement to decide the claim. *Newberry v. Pacific Racing Ass'n.*, 854 F.2d 1142,  
15 1149-50 (9th Cir. 1988) (emotional distress claim preempted by section 301); *see also Scott v.*  
16 *Machinists Automotive Trades Dist. Lodge No. 190*, 827 F.2d 589, 594 (9th Cir. 1987) (emotional  
17 distress claim preempted under section 301 when arising out of employee's discharge or conduct of  
18 employer in investigatory proceedings preceding discharge). Plaintiff's emotional distress claim  
19 therefore cannot be decided without interpreting or analyzing the terms of the agreement.

20       10. As such, this action is a civil action over which this Court has original jurisdiction  
21 under the provisions of 28 U.S.C. §§ 1331, and is one that may be removed by Berkeley Farms  
22 pursuant to 28 U.S.C. § 1441(a) and (b).

## Supplemental Jurisdiction

24        11. To the extent plaintiff's intentional infliction of emotional distress and breach of  
25 covenant of good faith and fair dealing claims are not completely preempted and are thus not  
26 removable to federal court, this Court may exercise supplemental jurisdiction over those claims.  
27 All of plaintiff's claims in the Complaint arise out of the plaintiff's grievances against defendants  
28 and arise out of the alleged termination of his employment. Thus, these claims arise out of the

1 same nucleus of operative facts. Since this Court has jurisdiction over the federal claims related to  
2 this case or controversy, it also has supplemental jurisdiction over any state law claims which form  
3 a part of the same case or controversy. 28 U.S.C. § 1337(a).

4 **INTRADISTRICT ASSIGNMENT**

5 12. Pursuant to Local Rule 3-2(d), Removal and Intradistrict Assignment to the Oakland  
6 or San Francisco divisions of this Court is proper because the alleged acts and occurrences arose in  
7 the County of Alameda.

8 WHEREFORE, defendant Berkeley Farms, LLC hereby removes the above action to this  
9 Court.  
10

11 DATED: August 13, 2014

12 OGLETREE, DEAKINS, NASH, SMOAK &  
13 STEWART, P.C.  
14

15 By: /s/ Jill V. Cartwright  
16 Thomas M. McInerney  
17 Jill V. Cartwright  
18

19 Attorneys for Defendant  
20 BERKELEY FARMS, LLC  
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## EXHIBIT A

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213~  
**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

*VIA* Berkley Farms Inc., Dean Foods Inc and DOES 1-100  
BERKLEY FARMS

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Clinton Hendrix

*F.I.N.D.O.R.S.E.D.*

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)
FILED
ALAMEDA COUNTY
JUL 14 2014
CLERK OF THE SUPERIOR COURT
By: <i>G - C D Z</i>
DEPUTY

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISOS! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papelería legal para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

California Superior Court, Hayward Branch, 24405 Amador Street  
Hayward CA 94544

CASE NUMBER:  
(Número del Caso):

**HG14732618**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kjell C. Bomark-Noel, Esq., 11854 Dublin Blvd, Dublin CA 94568

DATE: JUL 14 2014 LEAH T. WILSON Clerk, by  
(Fecha) EXECUTIVE OFFICER/CLERK (Secretario) *G - C D Z*, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

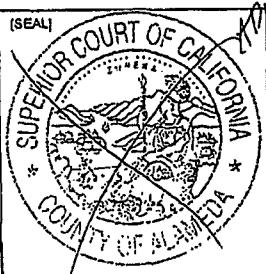
3.  on behalf of (specify):

*Berkley Farms, Inc.*

under:  CCP 416.10 (corporation)  
 CCP 416.20 (defunct corporation)  
 CCP 416.40 (association or partnership)  
 CCP 416.60 (minor)  
 CCP 416.70 (conservatee)  
 CCP 416.90 (authorized person)

4.  by personal delivery on (date):

*7/14/14*





## SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

VIA Berkley Farms Inc, Dean Foods Inc and DOES 1-100  
BERKELEY FARMS

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
Clinton Hendrix

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

*ENDORSED*

**FILED**  
**ALAMEDA COUNTY**

JUL 14 2014

CLERK OF THE SUPERIOR COURT  
By *CDB* DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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**HG 14732618**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kjell C. Bomark-Noel, Esq., 11854 Dublin Blvd, Dublin CA 94568

DATE: JUL 14 2014 LEAH T. WILSON Clerk, by  
(Fecha) EXECUTIVE OFFICER/CLERK (Secretario) *CDB*, Deputy  
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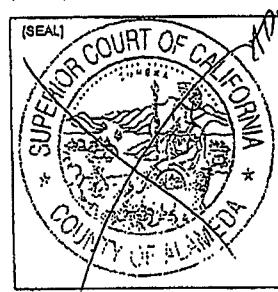
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 other (specify):

CCP 416.60 (minor)  
 CCP 416.70 (conservatee)  
 CCP 416.90 (authorized person)

4.  by personal delivery on (date):



1 Kjell C. Bomark-Noel; SBN 147494  
2 Law Offices of Bomark-Noel  
3 11854 Dublin Blvd  
4 Dublin, CA 94568  
5 510-325-6226  
6 Attorney for Defendants

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 14 2014

CLERK OF THE SUPERIOR COURT  
By: ANGEL LOGAN  
DEPUTY

5

6

7

8 SUPERIOR COURTOF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 Unlimited Jurisdiction

11 CLINTON HENDRIX

Case No **HG 14732618**

12 Plaintiff

13 Complaint for unlawful termination in  
14 violation of contract, harassment and  
15 infliction of emotional distress

16 v  
17 BERKELEY FARMS INC  
18 And DEAN FOODS INC.  
19 And Does 1-100

20 Defendants

21 RIGHT TO SUE LETTER

22 On November 5, 2013, The State of California, Department of Fair Employment &  
23 Housing issued it's final Right to sue letter. See attached **Exhibit A**. Which is a true and  
24 correct copy of the Right to Sue Letter.

25 Comes now Plaintiff Clinton Hendrix hereinafter, Plaintiff, with a civil complaint against  
26 Berkeley Farms. Berkeley Farms is a corporation doing business in the State of California  
27 County of Alameda with address at 25500 Clawiter Rd, Hayward CA94545. Dean Foods  
28 Inc is Berkeley Farms parent company based on the paychecks received by Plaintiff in the  
past. Herein after Berkeley Farms and Dean Foods Inc are combined as Defendants.  
Therefore, venue is Alameda County Superior Court. The Does 1-100 are sued as

Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 fictional entities, and when and if true names of persons or corporations are discovered  
2 those names will be substituted for the Does.

3 FACTS COMMON TO ALL CAUSES OF ACTION

4 1. Clinton Hendrix, hereinafter Plaintiff, had previously a grievance against Supervisor  
5 Peter Cheung a supervisor with Berkeley Farms. Plaintiff had previously filed two  
6 grievances with the Human Resources Manager at Berkeley Farms. One grievance was  
7 about an unsafe forklift incident in where the forklift lost its counterweight, something  
8 the plant manager and the safety-manager blamed in part on Plaintiff. Plaintiff had prior  
9 to the incident always operated the forklift in a safe and efficient manner. Plaintiff  
10 maintains that management unjustifiably blamed Plaintiff on something that was out of  
11 his control. The bolts holding the counterweight broke and caused Plaintiff to have a  
12 moving accident. The incident created in Plaintiff stress and anxiety. Into this situation  
13 and after Plaintiff was further harassed by Supervisor Chung, a severe anxiety developed  
14 in Plaintiff.

15 2. 1) Plaintiff filed a grievance in writing in where he stated, that he was harassed by a  
16 supervisors at Berkeley Farms. One allegation was that Plaintiff operated a fork-lift in an  
17 unsafe manner, something in which Plaintiff denies; and another statement by Plaintiff  
18 was one of harassment against Supervisor Peter Cheung in which eventually forced  
19 Plaintiff to resign under protest by calling over the phone in frustation and stating "I.  
20 Quit".

21 3. None of these written complaints of harassment were addressed by Berkeley Farms in  
22 compliance with Article 26 of the Corporation's employment agreement to with "Settlement of Disputes." As part of the harassment Peter Cheung had lifted his arm in a  
23 threatening manner such that Mr. Hendrix felt threatened by Mr. Cheung's demeanor,  
24 posture and verbalization.

25 4. The anxiety inflicted on Plaintiff by a Berkeley Farms Supervisor's behavior over the  
26 alleged forklift incident and over the threatening behavior by supervisor Cheung required

27  
28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 Mr. Hendrix to seek medical help and take Family Medical leave.

2 5. In fact Berkeley Farm knew that Mr. Hendrix was in need of professional counseling

3 based on the anxiety caused by Peter Cheung and managements in their handling of the

4 forklift incident and harrassment. See attached **Exhibit B** which is a true and correct

5 copy of a document received by Plaintiff prior to his termination.

6 6. Berkeley Farms claims That Mr. Hendrix called and said "I quit".

7 7. Nobody denies that Plaintiff showed up to work the very next day and clocked in as

8 normal and went to work. In fact, he showed the whole world by his action that he had

9 not quit when he called in and stated "I quit" over the phone. Plaintiff was clearly

10 venting his frustration, but by his act and actions, he clearly showed he had not quit by

11 clocking in and starting to work.

12 8. Berkeley Farms never followed Article 26 of its "Settlement of Disputes", but merely

13 terminated Mr. Hendrix in a manner not consistent with its own employment agreement.

14 First cause of Action

15 (Breach of Employment Contract)

16 9. The allegations set forth in Paragraphs 1 through 9 are re-alleged and incorporated

17 herein by reference.

18 10 Stated in Article 26 of the "employment agreement" an employee can expect

19 grievances to be handled in a fair an equitable manner.

20 ARTICLE 26, SETTLEMENT OF DISPUTES

21 11. "Section 1. Step 1 - All grievances of employees and disputes relating to the

22 application, and enforcement of this Agreement, shall be referred initially by the

23 employee and or shop steward to the employees' immediate supervisor or manager."

24 12, "Step 2 - if after five (5)business days the matter is not settled under the foregoing

25 procedure, the matter shall be referred in writing by the employee and or shop steward to

26 the Plant Manager, or Distribution Manager and the Human Resource Manager. The

27 written referral to Step 2 shall state the nature of the dispute and the remedy sought using

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
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1 the agreed upon form with copies served on the parties involved. Grievances filed under  
2 Article 5 shall be filed at Step 2. The Union may be represented by any of its officers,  
3 agents or other authorized persons, and the employer may be represented by its  
4 management personnel or other persons. The Step 2 grievance meeting shall be held  
5 within five (5) days of written notice of the referral, unless mutually agreed otherwise.  
6 Every effort shall be made to resolve differences at this level. Within five (5) days after  
7 the Step 2 grievance meeting the responding party shall serve the grieving party with a  
8 written response to the grievance, and if denied, setting forth the reasons.”

9 13. “Section 2. In the event grievances or disputes are not settled within five (5) days  
10 under the foregoing procedure, the matter may be referred to a Board of Adjustment. All  
11 such unresolved issues shall be in writing with copies to be served on the parties  
12 involved. The Union may be represented by any of its officers, agents or other authorized  
13 persons, and the Employer may be represented by its management personnel or other  
14 authorized persons. Every effort shall be made to resolve differences at this level.  
15 Section 3. The Board of Adjustment shall be composed of two (2) representatives of the  
16 Company and two (2) representatives of the Union. No such representative shall be a  
17 direct employee of the Company or of the Union involved in the dispute. A Chairman and  
18 Secretary shall be designated from among the panel.”

19 ///

20 14. During the entire course of plaintiff’s employment with defendants, there existed an  
21 express and implied-in-fact employment contract between plaintiff and defendants that, at  
22 the time of plaintiff’s discharge, included but was not limited to, the following terms and  
23 conditions:

24 A. Plaintiff would be able to continue his employment with defendant indefinitely as long  
25 as he carried out his duties in a proper and competent manner and paid his union dues;  
26 B. Plaintiff would not be demoted, discharged, or otherwise disciplined, nor would  
27 plaintiff’s job functions be reassigned for other than good cause .....”.

28 Complaint for unlawful termination  
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1 15. The alleged unsafe forklift operation should have resulted in retraining in company  
2 adopted safe practices and not leave Plaintiff with stress and anxiety. Improper forklift  
3 procedure if at all, should not have resulted in termination, but in retraining. The forklift  
4 "Counterweight" falling off shows unsafe equipment and not the ultimate responsibility  
5 of Plaintiff. It may be of note that Plaintiff has operated forklifts at Berkeley Farms for  
6 several years without incidents.

7 16. This employment contract was evidenced by various written documents,  
8 commendations, oral representations to plaintiff by defendants' agents and employees,  
9 and the parties' entire course of conduct, including the following as evidence by the  
10 employment handbook and Article 26 which Heading is "settlement of disputes".

11 17. A. Defendants' written personnel policies and discipline procedures are as stated in  
12 Article 26 Settlement of Disputes; and should thus have been followed.

13 18. B. The existence of an established policy with the defendant company, which was  
14 known to and relied on by plaintiff, that an employee such as plaintiff, who had  
15 performed service for Berkeley Farms for six years as a good and faithful employee,  
16 would have secure employment with defendants; that an employee such as plaintiff would  
17 not be discharged without good and sufficient cause and be afforded retraining and  
18 counseling when needed; that an employee such as plaintiff with a grievance or complaint  
19 lodged against him, would be provided a meaningful opportunity to respond and improve;  
20 and that an employee such as plaintiff would not be demoted, discharged, or disciplined  
21 without good and sufficient cause and would not otherwise have his job functions taken  
22 away or reassigned.

23 19. C. Throughout his employment, plaintiff was told by his superiors, that he was  
24 doing a satisfactory job except by Supervisor Peter Cheung. Plaintiff worked there for  
25 six years until Supervisor Cheung gave Plaintiff grief.

26 20. As a result of the above representations, plaintiff came reasonably to expect and to  
27 rely on the promise of job security and good and fair treatment. Such statements and acts

1 by defendants communicated to plaintiff the idea that he had performed satisfactorily  
2 until his interaction with Supervisor Cheung which cost Plaintiff great anxiety and need  
3 of medical counseling. Plaintiff in good faith relied on these representations of good and  
4 fair treatment and believed them to be true.

5 21. Plaintiff's reliance on, belief in, and acceptance in good faith of all the assurances,  
6 promises, and representations as listed in the preceding paragraphs led him to believe that  
7 his employment was secure and that there existed a contract of continuous employment  
8 with defendants. As independent consideration, in addition to performing his regular  
9 duties as an employee of defendant, plaintiff refrained from seeking other employment  
10 and pursuing other career opportunities while he was able to be re-trained without  
11 suffering from the stress and anxiety and there was still a need of his skills.

12 22.. Plaintiff understood and duly performed all conditions of the contract to be  
13 performed by him.

14 23. Plaintiff has at all times been ready, willing, and able to perform and has offered  
15 to perform all the conditions of this contract to be performed by him.

16 27. Despite the representations made to Plaintiff and the reliance Plaintiff placed on  
17 them, Defendants failed to carry out their responsibilities under the terms of the  
18 employment contract and breached the contract in the following ways:

19 By not following the Union Grievance Procedures and The employment Handbook.  
20 Plaintiff should have received counseling as the stress created in Plaintiff were in fact  
21 caused directly and indirectly by Defendants. Plaintiff should have been given any  
22 necessary forklift retraining to company standards if management decided that was  
23 necessary. The failure of Defendants to make Plaintiff understand that the  
24 "Counterweight" incident was beyond Plaintiff's control would have alleviated some  
25 anxiety and stress.

26 ///

27 ///

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 The company and Defendants failed by:

2 28. A. Subjecting plaintiff to different standards from those set for other employees;

3 29 B. Terminating plaintiff's employment without cause and for reasons that have

4 | nothing to do with legitimate business justification, despite the past (Six Years)

5 satisfactory job performance.

6 30. C Failing to follow their own written personnel policies or to apply the same

7 personnel policies to plaintiff that they apply to other employees.

8 31. D. Failing and refusing to place plaintiff in alternative positions while he had stress  
9 and counseling issues that were available and for which plaintiff was qualified.

10 32. As a proximate result of defendants' breach, plaintiff has suffered and continues to  
11 suffer substantial losses in earnings, bonuses, and other employment benefits that he  
12 would have received had defendants not breached said agreement, including but not  
13 limited to expenses incurred in obtaining substitute employment, all to his damage in an  
14 amount according to proof.

## SECOND CAUSE OF ACTION

### (Intentional Infliction of Emotional Distress)

18 33. The allegations set forth in Paragraphs 1 through 32 are re-alleged and incorporated  
19 herein by reference.

20 34. Defendants knew of Plaintiff's fragile emotional state based on the harassment and  
21 the forklift incident.

22 35. Defendants through their management and supervisors showed a callous disregard  
23 for Plaintiff's emotional state and intentionally inflicted anxiety on Plaintiff.

24 Wherefore Plaintiff prays for Judgment as stated below.

25

26 //

37 //

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
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### THIRD CAUSE OF ACTION

### (Breach of the Covenant of Good Faith and Fair Dealing)

4 36. The allegations set forth in Paragraphs 1 through 35 are re-alleged and incorporated  
5 herein by reference.

6 37. Plaintiff's employment agreement with defendants contained an implied covenant of  
7 good faith and fair dealing by which defendants, and each of them, promised to give full  
8 cooperation to plaintiff in his employment performance and to refrain from doing any act  
9 that would prevent or impede plaintiff from performing all conditions of his employment  
10 or any act that would prevent or impede plaintiff's enjoyment of the fruits of his  
11 employment. Specifically, the covenant of good faith and fair dealing required defendants  
12 to fairly, honestly, and reasonably perform the terms and conditions of the employment  
13 agreement.

14 38. Plaintiff, as an individual employee, was in an inherently unequal bargaining position  
15 in his dealings with Defendants. In addition, Plaintiff entrusted his entire livelihood to  
16 Defendants' willingness to perform their obligations under the terms of employment, and  
17 he suffered great harm;. Defendants were aware of plaintiff's vulnerability in the regard  
18 and need of medical counseling due to the anxiety brought on by management and  
19 Supervisor Chung.

20 39. Defendants' termination of plaintiff's employment was wrongful, in bad faith,  
21 arbitrary, and unfair, and done to frustrate his enjoyment of the contract's actual benefits,  
22 in breach of said covenant, in that plaintiff was terminated on the pretext that just cause  
23 exited to discharge him, when defendants knew that there was no just cause. Plaintiff had  
24 not quit. Plaintiff was discharged for reasons extraneous to the employment agreement,  
25 without good or sufficient cause, in violation of defendants' policy to deal consistently  
26 and fairly with its employees, and for the purpose of frustrating plaintiff's enjoyment of  
27 the benefits of his employment with Defendants. Further, Defendants breached the

28 Complaint for unlawful termination  
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1 covenant by:

2 40. A. Subjecting plaintiff to different standards from those expected of employees;  
3 41. B. Terminating plaintiff's employment without cause and for reasons that have  
nothing to do with legitimate business justification, despite satisfactory job performance.  
4 42. C. Failing to follow their written personnel policies or to apply the same personnel  
5 policies to plaintiff that it applies to other employees.  
6 43. D. Failing and refusing to place plaintiff in alternative positions that were available  
and for which plaintiff was qualified.

7

8

9 PRAYER FOR RELIEF

10 WHEREFORE, plaintiff prays for judgement against defendants as follows:

11 (1) To be reinstated with back-pay and seniority  
12 (2) For compensatory damages including lost wages, lost employee benefits, bonuses,  
vacation benefits, and other special and general damages according to proof on each  
13 cause of action;  
14 (3) For mental and emotional distress on the First and Second Cause of Action;  
15 (4) For punitive damages on the First and Second Cause of Action;  
16 (5) For an award of attorney fees on the First and Second Cause of Action;  
17 (6) For an award of interest, including pre-judgment interest, at the legal rate;  
18 (8) For an award to plaintiff of the costs of suit incurred herein on all causes of action;  
19 and  
20 (9) For such other and further relief as this court deems just and proper.

22

23

24 Date: 7/14/2014

By Kjell C.

25 Kjell Bomark-Noel

26 Attorney for Plaintiff

27

28

Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
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1 Verification

2 I Clinton Hendrix having reviewed the facts as stated in this complaint find them true and  
3 correct to the best of my memory and recollection. Under penalty of perjury under the laws  
4 of the State of California I affirm the facts true and correct to the best of my recollection  
5 and memory.

6 Date: 7/14/2014

7 By:

8 Clinton Hendrix

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Complaint for unlawful termination  
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emotional distress

*Clinton Hendrix*



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | Videophone 916-226-5285 | TTY 800-700-2320  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov) | email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

GOVERNOR EDMUND G. BROWN JR.  
DIRECTOR PHYLLIS W. CHENG

Nov 05, 2013

Clinton Hendrix  
23 park circle  
sausalito, ca 94965

**RE: Notice of Case Closure and Right to Sue**  
DFEH Matter Number: 182381-77025-R  
Right to Sue: Hendrix / Berkeley Farms, Dunia xxx

Dear Clinton Hendrix:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Nov 05, 2013 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

Enclosures

cc: Berkeley Farms

**EXHIBIT A**

## Code of Ethics . Line

## INVESTIGATION REPORT

INVESTIGATION REPORT	
Date	9/26/2011
Caller Name	Clinton Hendrix
Location	Berkeley Farms
Department	Plant

## Summary of Caller's Allegation(s)/Concern(s):

On June 6, 2011 production manager Peter Chuang embarrassed Hendrix in front of his peers when he chastised him for having a magazine in a production area.

Investigator:	Gennifer Tate
Case Manager:	Gennifer Tate

## Summary of Investigation Findings:

Maintain separate & confidential investigation file containing notes, witness statements and any other documents obtained in support of your investigation.

Hendrix complained on June 6, 2011 to Marcy Davis, HR department that he had just been chastised by Peter Chuang for having a magazine in the work area and that he was embarrassed because Peter talked about it in front of other production workers. Hendrix told Davis that he was going to go home. She advised him to complete his shift. Hendrix later confronted Chuang again began swearing got angry and punched out before the end of his shift. He was suspended for one week for insubordination. When he returned from suspension he talked to the HR manager Gennifer Tate about the incident. Tate informed Hendrix that the incident was discussed with Chuang and that Chuang was counseled about the proper way to address disciplinary issues with employees. Hendrix said that he could no longer work with Chuang. Tate explained that Chuang will continue in his job as production manager but that any time Hendrix felt that Chuang was treating him disrespectfully, to advise either HR or the union. Hendrix then asked if he could take some time off to "get his head together" because he is not comfortable working with Chuang. He said he was feeling attacked and victimized. Tate asked Hendrix if he wanted to meet with Chuang, his shop steward and Tate to discuss how he was feeling. Hendrix refused so Tate suggested to Hendrix that he seek professional help to sort out his feelings and mentioned that he could use FMLA. Hendrix took a leave of absence of about 2 weeks. Hendrix filed a grievance with the union on August 23, 2011 over this matter. Tate spoke with Hendrix and again informed him that the incident had been discussed with Chuang. Hendrix again said he could not work with Chuang and wished that Chuang would leave him alone. On October 4, 2011 during a discussion with Tate and shop steward Ramon Castillo Hendrix stated that is obvious that someone talked to Chuang because Chuang avoids him.

Action(s) Taken as a Result of Findings: No action was taken. Issue was addressed with Chuang in June 2011.

## RESOLUTION INFORMATION

## Outcome:

**EXHIBIT**

None where appropriate below.	No Investigation Necessary Policy/Procedure inquiry requiring no investigation.
	Complaint is Without Merit Complaint Report is not merit.

1 Thomas M. McInerney CA Bar No. 162055  
tmm@ogletreedeakins.com  
2 Jill V. Cartwright CA Bar No. 260519  
jill.cartwright@ogletreedeakins.com  
3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
Steuart Tower, Suite 1300  
4 One Market Plaza  
San Francisco, CA 94105  
5 Telephone: 415.442.4810  
Facsimile: 415.442.4870  
6  
7 Attorneys for Defendant  
BERKELEY FARMS, LLC  
(erroneously sued as BERKELEY FARMS INC.)  
8

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11  
12 CLINTON HENDRIX

13 Plaintiff,

14 v.

15 BERKELEY FARMS INC. and DEAN  
FOODS INC. and DOES 1-100,

16 Defendant.

17 Case No. 4:14-cv-03659

18 **DEFENDANT BERKELEY FARMS, LLC'S  
NOTICE OF MOTION AND MOTION TO  
DISMISS**

Date: September 25, 2014

Time: 10:00 a.m.

Location: Courtroom 4, 17<sup>th</sup> Floor

Complaint Filed: July 14, 2014

Trial Date: Not Set

**NOTICE OF MOTION AND MOTION TO DISMISS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on September 25, 2014 at 10:00 a.m., or as soon thereafter as  
counsel may be heard in Courtroom 4, 17th Floor of the above-titled court, located at 450 Golden  
Gate Avenue, San Francisco, California 94102, defendant BERKELEY FARMS, LLC  
(erroneously sued as BERKELEY FARMS INC.) will, and hereby does, move this Court pursuant  
to Rule 12(b) of the Federal Rules of Civil Procedure and Rule 7-1 of the Northern District Local  
Rules of Court for an order dismissing this action for failure to state a claim upon which relief can  
be granted.

10 The Motion to Dismiss is based on this Notice of Motion and Motion, the Memorandum of  
11 Points and Authorities, the Request for Judicial Notice, the pleadings on file herein and such  
12 arguments and admissible evidence as may be presented at the time of hearing.

DATED: August 20, 2014

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By: /s/ Thomas M. McInerney

Thomas M. McInerney

Jill V. Cartwright

Attorneys for Defendant  
BERKELEY FARMS, LLC

18686562.2

1 Thomas M. McInerney CA Bar No. 162055  
tmm@ogletreedeakins.com  
2 Jill V. Cartwright CA Bar No. 260519  
jill.cartwright@ogletreedeakins.com  
3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
Steuart Tower, Suite 1300  
4 One Market Plaza  
San Francisco, CA 94105  
5 Telephone: 415.442.4810  
Facsimile: 415.442.4870  
6  
7 Attorneys for Defendant  
BERKELEY FARMS, LLC  
(erroneously sued as BERKELEY FARMS INC.)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

12 CLINTON HENDRIX

Case No. 4:14-cv-03659-VC

Plaintiff,

14 | V.

**DEFENDANT BERKELEY FARMS, LLC'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ITS  
MOTION TO DISMISS PURSUANT TO  
FRCP 12(b)(6)**

**Defendant.**

Date: September 25, 2014  
Time: 10:00 a.m.  
Location: Courtroom 4, 17<sup>th</sup> Floor

Complaint Filed: July 14, 2014  
Trial Date: Not Set

TABLE OF CONTENTS

	<u>Page</u>	
I.	INTRODUCTION.....	1
II.	FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY .....	2
III.	ARGUMENT .....	4
A.	Hendrix's Second And Third Causes Of Action Are Barred By The Statute Of Limitations. ....	5
B.	Hendrix's First and Third Causes of Action Are Preempted By Section 301 And Cannot be Asserted in this Action. ....	5
C.	Hendrix Has Not Alleged a Claim for Breach of the Union's Duty of Fair Representation and any Such Claim is Now Time Barred. Therefore, His Breach of Contract Claim Against Berkeley Farms Must Fail.....	7
D.	Hendrix's First and Third Causes of Action Are Barred by His Failure to Exhaust His Contractual Remedies. ....	9
E.	Hendrix's Second Cause Of Action Also Fails To State A Claim Upon Which Relief Can Be Granted And Thus Must Be Dismissed With Prejudice. ....	10
1.	Hendrix Must Plead Facts Demonstrating That He Has a Plausible Basis for Relief. ....	10
2.	Hendrix's Intentional Infliction of Emotional Distress Cause of Action Fails to Plead Facts Establishing a Plausible Basis for Relief.....	11
3.	Plaintiff Cannot Show that Berkeley Farms' Actions Were Extreme and Outrageous or That He Suffered Emotional Distress. ....	12
4.	Hendrix's IIED Claim is Barred by the Exclusivity of the Workers' Compensation Laws. ....	13
F.	Hendrix's Third Cause of Action is Superfluous and Must be Dismissed. ....	13
IV.	CONCLUSION .....	14

## **TABLE OF AUTHORITIES**

Page(s)

FEDERAL CASES

4	<i>Aguilera v. Pirelli Armstrong Tire Corp.</i> , 223 F.3d 1010 (9th Cir. 2000) .....	7
5	<i>Allis-Chalmers Corp. v. Lueck</i> , 471 U.S. 202 (1985) .....	8
6	<i>Anderson v. Clow</i> , 89 F.3d 1399 (9th Cir. 1996) .....	4
7	<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009) .....	10, 11
8	<i>Bachilla v. Pacific Bell Telephone Co.</i> 2007 WL 2825924 (E.D. Cal. 2007) .....	4
9	<i>Balistreri v. Pacifica Police Dep't</i> , 901 F.2d 696 (9th Cir. 1988) .....	4
10	<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	4, 10, 11
11	<i>Bliesner v. Commc'n. Workers of Am.</i> , 464 F.3d 910 (9th Cir. 2006) .....	7
12	<i>Bloom v. Universal City Studios, Inc.</i> , 734 F. Supp. 1553 (C.D. Cal. 1990) .....	6
13	<i>Branch v. Tunnel</i> , 14 F.3d 449 (9th Cir. 1994) .....	4
14	<i>Carr v. Pacific Maritime Association</i> , 904 F.2d 1313 (9th Cir. 1990) .....	10
15	<i>Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry</i> , 949 U.S. 558 (1990) .....	7
16	<i>Chmiel v. Beverly Wilshire Hotel Co.</i> , 873 F.2d 1283 (9th Cir. 1989) .....	6, 7
17	<i>DelCostello v. International Brotherhood of Teamsters</i> , 462 U.S. 151 (1983) .....	7, 8, 10
18	<i>Greenly v. Sara Lee</i> , 2006 WL 2837252 (E.D. Cal. 2006) .....	6

1	<i>Hall v. FedEx Freight, Inc.</i> , 2014 WL 3401386 (E.D. Cal. July 11, 2014).....	5
2		
3	<i>Hines v. Anchor Motor Freight, Inc.</i> , 424 U.S. 554 (1976) .....	8
4		
5	<i>Knowles v. Pacific Gas &amp; Electric Co.</i> , 2008 WL 2705097 (N.D. Cal. 2008).....	8, 9
6		
7	<i>N.L.R.B. v. Allis-Chalmers Mfg. Co.</i> , 388 U.S. 175 (1987) .....	7
8		
9	<i>Niehaus v. Greyhound Lines, Inc.</i> , 173 F.3d 1207 (9th Cir. 1999) .....	6
10		
11	<i>O'Sullivan v. Longview Fibre Company</i> , 993 F. Supp. 743 (N.D. Cal. 1997).....	9
12		
13	<i>Paige v. Henry J. Kaiser Co.</i> , 826 F.2d 857 (9th Cir. 1987).....	5
14		
15	<i>Parrino v. FHP, Inc.</i> , 146 F.3d 699 (9th Cir. 1998) .....	4
16		
17	<i>Price v. Georgia-Pacific Corp.</i> , 99 F. Supp.2d 1162 (N.D. Cal. 2000).....	10
18		
19	<i>Soremekun v. Thrifty Payless, Inc.</i> , 509 F.3d 978 (9th Cir. 2007) .....	9
20		
21	<i>Stallcop v. Kaiser Foundation Hosp.</i> , 820 F.2d 1044 (9th Cir. 1987) .....	8
22		
23	<i>Stewart v. Leland Stanford Junior University</i> 2006 WL 889437 (N.D. Cal. 2006).....	4
24		
25	<i>Swiekiewics v. Sorema N.A.</i> , 534 U.S. 506 (2002) .....	6
26		
27	<i>Teamsters v. Lucas Flour Co.</i> , 369 U.S. 95 (1962) .....	5
28		
29	<i>United Paperworkers Int'l Union v. Misco, Inc.</i> , 484 U.S. 29 (1987) .....	9
30		
31	<i>United Steel Workers of America v. Warner and Gulf Navigation Co.</i> , 363 U.S. 574 (1960) .....	7
32		
33	<i>Vaca v. Sipes</i> , 386 U.S. 171 (1967) .....	7, 8, 9
34		

1	<i>Young v. Anthony's Fish Grottos, Inc.</i> , 830 F.2d 993 (9th Cir. 1987) .....	10
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2           **STATE CASES**

4	<i>Alcorn v. Anbro Engineering, Inc.</i> , 2 Cal. 3d 493 (1970) .....	12
5	<i>Bogard v. Employers Casualty Co.</i> , 164 Cal. App. 3d 602 (1985) .....	12
7	<i>Careau &amp; Co. v. Security Pac. Business Credit, Inc.</i> , 222 Cal. App. 3d 1371 (1991) .....	13
9	<i>Christensen v. Super. Ct.</i> , 54 Cal. 3d 868 (1991) .....	12
10	<i>Cole v. Fair Oaks Fire Protection Dist.</i> , 43 Cal. 3d 148 (1987) .....	13
12	<i>Foley v. Interactive Data Corp.</i> , 47 Cal. 3d 654 (1988) .....	13
14	<i>Guz v. Bechtel Nat'l Inc.</i> , 24 Cal. 4th 317 (2000) .....	13
15	<i>Livitsanos v. Super. Ct.</i> , 2 Cal. 4th 744 (1992) .....	13
17	<i>Michaelian v. State Comp. Ins. Fund</i> , 50 Cal. App. 4th 1093 (1996) .....	12
19	<i>Pugliese v. Superior Court</i> , 146 Cal. App. 4th 1444 (2007) .....	5
20	<i>Shoemaker v. Myers</i> , 52 Cal. 3d 1 (1990) .....	13

22           **FEDERAL STATUTES**

23	29 U.S.C. § 185(a) .....	passim
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24           **STATE STATUTES**

25	Cal. Civ. Proc. § 335.1 .....	5
26	Cal. Lab. Code § 3200, <i>et seq.</i> .....	13

**1 OTHER AUTHORITIES**

2 Fed. R. Civ. P. 8(a)(2) .....	11
3 Fed. R. Civ. P. 12(b)(6) .....	4, 14
4 Restatement (Second) of Torts § 46(1) (1965).....	12

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1     I.     INTRODUCTION

2                 Defendant Berkeley Farms, LLC (erroneously sued as BERKELEY FARMS INC.) seeks  
3                 dismissal of plaintiff Clinton Hendrix's Complaint on the basis that it is preempted by section 301  
4                 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a) ("section 301"), that  
5                 Hendrix has not, and cannot, state a cause of action under section 301, his claims are barred by his  
6                 failure to exhaust contractual and administrative remedies, and his claims are barred by the statute  
7                 of limitations. In addition, Hendrix fails to plead facts sufficient to support his second cause of  
8                 action for Intentional Infliction of Emotional Distress ("IIED"), and his IIED claim is barred by the  
9                 exclusivity of workers' compensation.

10                 Berkeley Farms manufactures, sells, and distributes dairy products. According to the  
11                 Complaint, Hendrix was a member of a union, and as such, the terms and conditions of his  
12                 employment are covered by a collective bargaining agreement ("CBA"). (Doc. No. 1, Ex. A;  
13                 Request for Judicial Notice ("RJN"), ¶ 1: Declaration of Gennifer Tate ("Tate Decl.") at ¶ 2, Ex. 1).  
14                 In this action, Hendrix asserts three claims: (1) breach of contract; (2) intentional infliction of  
15                 emotional distress; and (3) breach of the covenant of good faith and fair dealing. Hendrix's  
16                 complaint asserts that under the CBA he could only be terminated for "just cause," and that  
17                 Berkeley Farms lacked such justification (Complaint ¶¶ 6-8, 14, 29); and that Berkeley Farms  
18                 knew Hendrix needed professional counseling because his supervisor caused him anxiety but  
19                 Berkeley Farms showed "callous disregard" for Hendrix's emotional state (Complaint ¶¶ 4-5, 34-  
20                 35).

21                 Because Hendrix's employment is governed by a CBA, his state law claims are preempted  
22                 under section 301, and therefore, he may only bring federal claims. Hendrix has not and cannot  
23                 plead any breach of the union's duty of fair representation, and without that cannot maintain an  
24                 action against Berkeley Farms. In addition, Hendrix's entire action is precluded based on his  
25                 failure to exhaust the grievance procedures set forth in the CBA, which failure constitutes a waiver  
26                 of such claims. Finally, Hendrix fails to plead facts sufficient to support a claim for IIED.  
27                 Accordingly, the Court should dismiss Hendrix's entire Complaint as preempted by section 301 of  
28

1 the LMRA, because Hendrix has failed to state a claim upon which relief can be granted, and  
2 because Hendrix's claims are barred by his failure to exhaust administrative remedies.

3 **II. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY**

4 At all times during and after Hendrix's employment, he was represented by the  
5 International Brotherhood of Teamsters, Local 853 ("Teamsters"). (RJN ¶ 1, Tate Dec. at Ex. 1).  
6 Hendrix's employment with Berkeley Farms was governed by a CBA between the Teamsters and  
7 Berkeley Farms under Articles 4, 24, 29 and 30. (Complaint ¶¶ 1, 2, 3, 8, 10-18, 22, and 27,  
8 (referencing a "grievance" "Union Grievance Procedures," and "Article 26"); RJN ¶ 1, Tate Dec. at  
9 Ex. 1 (hereinafter the "CBA")). Article 3 provides for recognition of the Teamsters as the  
10 exclusive collective bargaining agent and representative of the employees covered by the CBA.  
11 (CBA Article 3, Section 1). Article 3, Section 2 requires that all employees subject to the  
12 agreement must become and remain a member of the union as a condition of employment with  
13 Berkeley Farms.

14 The CBA governed Hendrix's employment, including the allowable circumstances and  
15 grounds for termination, seniority, working hours and overtime, and the grievance procedures to be  
16 followed in the event of a dispute. (Articles 22, 24, 26, 29, 30, and 37 of the CBA, respectively).  
17 The CBA requires that an employee desiring to quit employment "shall give three (3) days' notice  
18 to his employer." (CBA, Article 37, Section 2). The CBA also requires that Berkeley Farms "shall  
19 not discharge or suspend any employee without just cause." (CBA, Article 5, Section 2).

20 Article 26 of the CBA governs the settlement of disputes between an employee and  
21 Berkeley Farms. (Complaint ¶¶ 3, 10-13). Step one requires all employee grievances to be  
22 referred to the employee's immediate supervisor. (Complaint ¶ 11; CBA, Article 26, Section  
23 1.Step 1). If, after five business days, the dispute does not settle, the matter is referred to Step 2.  
24 (Complaint ¶ 12; CBA, Article 26, Section 1.Step 1).

25 Step 2 provides for written referral to Berkeley Farms' management, including Human  
26 Resources, regarding the nature of the dispute and the remedy sought. (Complaint ¶ 12; CBA,  
27 Article 26, Section 1.Step 2). Step 2 also provides for a meeting between the union and Berkeley  
28 Farms to resolve the dispute within five days of the written notice of the dispute. (Complaint ¶ 12;

1 CBA, Article 26, Section 1.Step 2). Within five days after the Step 2 grievance meeting, the  
2 company must serve the grieving employee with a written response to the grievance. (Complaint  
3 ¶ 12; CBA, Article 26, Section 1.Step 2). If the grievance is denied, the company must provide a  
4 written explanation. (Complaint ¶ 12; CBA, Article 26, Section 1.Step 2).

5       If the Step 2 does not resolve the dispute, the dispute may be referred to a Board of  
6 Adjustment. (Complaint ¶ 13; CBA, Article 26, Section 2). The Board of Adjustment must meet  
7 within ten days after the submission of a dispute. (Complaint ¶ 13; CBA, Article 26, Section  
8 1.Step 2). The Board of Adjustment is composed of two (2) company representatives and two (2)  
9 union representatives. (Complaint ¶ 13; CBA, Article 26, Section 3). The union and the company  
10 may send representatives to appear before the Board of Adjustment, and the Board of Adjustment  
11 will vote on how to decide the dispute. (Complaint ¶ 13; CBA, Article 26, Section 3). If the Board  
12 of Adjustment cannot reach a majority vote, the dispute may then be submitted to arbitration.  
13 (CBA, Article 26, Section 4). The decision of the arbitrator is final and binding upon the parties to  
14 the dispute. (CBA, Article 26, Section 4).

15       Hendrix's employment at Berkeley Farms ended on or about November 6, 2011. (RJN  
16 ¶¶ 2-3 , Tate Dec. ¶¶ 4-5, Exs. 2-3 ). Hendrix alleges Berkeley Farms terminated his employment  
17 without cause as required by the CBA. (Complaint ¶ 29). Though Hendrix alleges he was  
18 improperly terminated from his employment at Berkeley Farms, he does not allege that he followed  
19 any aspect of the grievance procedures as set forth in Article 26 of the CBA to grieve his alleged  
20 termination. (Complaint ¶¶ 6-8). The only reference to Article 26 appears to be a grievance that  
21 Hendrix submitted prior to his alleged termination. (Complaint ¶¶ 1-3). But, Hendrix does not  
22 allege this grievance related to his termination. (Complaint ¶¶ 1-3).

23       Without complying with the grievance procedures in the CBA, Hendrix filed his civil court  
24 complaint on July 14, 2014, in Alameda County Superior Court, alleging three causes of action  
25 against Berkeley Farms for breach of contract, intentional infliction of emotional distress, and  
26 breach of the implied covenant of good faith and fair dealing. Hendrix has not alleged any breach  
27 of duty against his union, Teamsters Local 853. On August 13, 2014, Berkeley Farms removed the  
28 action to the Northern District of California. (Doc. No. 1).

1     **III. ARGUMENT**

2           Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, this Court may dismiss  
3 claims that fail to allege a “cognizable legal theory” or “sufficient facts … under a cognizable legal  
4 theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988) *citing Robertson v.*  
5 *Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984). A Rule 12(b)(6) motion should  
6 be granted when, accepting the plaintiff’s factual allegations as true and drawing all reasonable  
7 inferences in plaintiff’s favor, the plaintiff has still failed to state a claim for which relief can be  
8 granted. *Anderson v. Clow*, 89 F.3d 1399, 1403 (9th Cir. 1996). To survive a motion to dismiss, a  
9 complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is  
10 plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-557 (2007).

11           Generally, when making the determination whether to dismiss pursuant to Rule 12(b)(6), a  
12 district court may not consider any material beyond the pleadings. *Branch v. Tunnel*, 14 F.3d 449,  
13 453 (9th Cir. 1994). However, a document outside the complaint is not “extrinsic to it” and does  
14 not convert a motion to dismiss into a motion for summary judgment where, as here, a “plaintiff  
15 fails to introduce a pertinent document as part of his pleading, [in which case the] defendant may  
16 introduce the exhibit as part of his motion attacking the pleading.” *Branch*, 14 F.3d at 453. This  
17 principle has been extended to other documents, references to which are deliberately omitted from  
18 the complaint, but upon which the complaint necessarily relies, including a collective bargaining  
19 agreements. *Bachilla v. Pacific Bell Telephone Co.* 2007 WL 2825924 \*5, \*10 (E.D. Cal. 2007)  
20 (granting dismissal of plaintiffs’ claims for breach of implied contract when they were subject to a  
21 CBA offered by defendants in support of defendants’ motion to dismiss *citing Parrino v. FHP,*  
22 *Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (holding that the court properly considered ERISA plan  
23 documents filed in support of defendant’s 12(b)(6) motion in an action removed on ERISA  
24 preemption)); *Stewart v. Leland Stanford Junior University* 2006 WL 889437 \*1, \*5 (N.D. Cal.  
25 2006) (granting defendants’ motion to dismiss with prejudice relying, in part, on the CBA offered  
26 in support of defendants’ motion). Where an allegation rests upon the interpretation of a document  
27 that is not attached to the complaint, the defendant may attach the document to his Rule 12(b)(6)  
28 motion, even if the plaintiff’s complaint does not explicitly refer to it. *Parrino*, 146 F.3d at 706.

1           A.     Hendrix's Second And Third Causes Of Action Are Barred By The Statute Of  
2           Limitations.

3           Hendrix's second cause of action for intentional infliction of emotional distress and third  
4 cause of action for breach of the covenant of good faith and fair dealing are governed by the two-  
5 year statute of limitations applicable to personal injury claims—section 335.1 of the Code of Civil  
6 Procedure. *Pugliese v. Superior Court*, 146 Cal. App. 4th 1444, 1450 (2007); *Hall v. FedEx*  
7 *Freight, Inc.*, 1:13-CV-01711 -SKO, 2014 WL 3401386 (E.D. Cal. July 11, 2014) (“[A] claim for  
8 breach of the implied covenant of good faith and fair dealing has a two-year statute of limitation  
9 arising out of a tort theory, and four years when predicated on a contract theory.”). Berkeley Farms  
10 allegedly terminated Hendrix's employment on or about November 6, 2011. (RJN, Exs. 2-3; Tate  
11 Dec. ¶¶ 4-5, Exs. 2-3). As such, Hendrix had until November 6, 2013 to bring these two causes of  
12 action against Berkeley Farms. He failed to do so, and therefore, his second and third causes of  
13 action are barred by Section 335.1 of the California Code of Civil Procedure. Berkeley Farms  
14 requests the Court dismiss these two causes of action with prejudice.

15           B.     Hendrix's First and Third Causes of Action Are Preempted By Section 301  
16           And Cannot be Asserted in this Action.

17           Federal labor law preempts Hendrix's claim for breach of contract and breach of the  
18 covenant of good faith and fair dealing because they arise out of his termination, which is governed  
19 by the CBA, and thus would require interpretation of the CBA. For over a half-century, federal  
20 courts have interpreted section 301 of the Labor Management Relations Act to preempt state  
21 contract law claims against an employer that implicate the terms of a collective bargaining  
22 agreement. *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103-104 (1962). “The preemptive force of  
23 section 301 is so powerful as to displace entirely any state cause of action for violation of a  
24 collective bargaining agreement.” *Paige v. Henry J. Kaiser Co.*, 826 F.2d 857, 861 (9th Cir. 1987)  
25 (holding that plaintiffs' two claims for wrongful discharge based on state law, including claims of  
26 unsafe working conditions and internal complaints made regarding such conditions, were  
27 completely preempted by section 301).

28           ///

1       Section 301 preempts claims that “are based directly on rights created by a collective  
2 bargaining agreement as well as claims that are substantially dependent on an interpretation of a  
3 collective bargaining agreement.” *Niehaus v. Greyhound Lines, Inc.*, 173 F.3d 1207, 1211 (9th Cir.  
4 1999) *citing Beals v. Kiewit Pacific Co., Inc.*, 114 F.3d 892, 894 (9th Cir. 1997)); *Chmiel v.*  
5 *Beverly Wilshire Hotel Co.*, 873 F.2d 1283, 1285 (9th Cir. 1989) (Plaintiff’s claim that his  
6 employer entered into express or implied contract guaranteeing termination only for good cause,  
7 independent of the collective bargaining agreement, was properly subjected to complete  
8 preemption under section 301). “The Ninth Circuit has explained numerous times that § 301a  
9 preempts state law breach of contract claims involving job positions covered by the collective  
10 bargaining agreement.” *Bloom v. Universal City Studios, Inc.*, 734 F. Supp. 1553, 1558 (C.D. Cal.  
11 1990) (granting defendant’s motion for summary judgment and holding that plaintiff’s claims for  
12 breach of oral contract were properly preempted by section 301, and therefore properly dismissed  
13 on plaintiff’s failure to exhaust administrative remedies under the CBA). Hendrix’s employment  
14 with Berkeley Farms was governed by a CBA, not an express or implied-in-fact contract, and his  
15 claims require interpretation of the CBA. Therefore his claims are preempted by section 301 of the  
16 LMRA.

17       Once preempted, allegations sufficiently pled are allowed to move forward if able to be  
18 recharacterized as a section 301 claim. *Swiekiewics v. Sorema N.A.*, 534 U.S. 506, 513, 515  
19 (2002); *Greenly v. Sara Lee*, 2006 WL 2837252, \*6 (E.D. Cal. 2006). Though not adequately pled,  
20 even if his claims were recharacterized under section 301, Hendrix’s claims are still subject to  
21 dismissal.

22       Hendrix’s first cause of action alleges that he was a party to an express and implied-in-fact  
23 employment contract, independent of the CBA, that: he would continue his employment  
24 indefinitely as long as he carried out his duties in a proper and competent manner, and paid his  
25 union dues; and that he would not be demoted, discharged, or otherwise disciplined, for other than  
26 good cause. (Complaint ¶¶ 14(A)-(B)). Hendrix’s third cause of action alleges he had an  
27 “employment agreement” with Berkeley Farms. (Complaint ¶ 37). Independent agreements  
28 regarding employment conditions between employers and union-member employees in a

1 collectively-bargained workplace, such as the express and implied-in-fact agreement Hendrix  
 2 alleges in his Complaint, are precluded by law. *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175,  
 3 180 (1987) (“National labor policy . . . extinguishes the individual employee’s power to order his  
 4 own relations with his employer and creates a power vested in the chosen representative to act in  
 5 the interests of all employees.”); *Aguilera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010, 1015  
 6 (9th Cir. 2000) (“We have previously held that where the position in dispute is ‘covered by the  
 7 CBA, the CBA controls any claims seeking to enforce the terms of [an agreement] are  
 8 preempted.’” *citing Audette v. ILWO Local 24*, 195 F.3d 1107, 1112 (9th Cir. 1999) brackets in  
 9 *Aguilera*). “The collective bargaining agreement states the rights and duties of the parties. It is  
 10 more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen  
 11 cannot wholly anticipate.” *United Steel Workers of America v. Warner and Gulf Navigation Co.*,  
 12 363 U.S. 574, 578 (1960). A state law breach of contract claim therefore cannot be stated where,  
 13 as here, the plaintiff’s employment is admittedly governed by a collective bargaining agreement  
 14 governing the same subject matter. *Chmiel*, 873 F.2d at 1285 (Plaintiff’s claim regarding  
 15 independent oral agreement with employer were subject to 301 preemption).

16       C.     Hendrix Has Not Alleged a Claim for Breach of the Union’s Duty of Fair  
 17       Representation and any Such Claim is Now Time Barred. Therefore, His  
 18       Breach of Contract Claim Against Berkeley Farms Must Fail.

19       In order for an employee to recover under section 301, Hendrix must also show that his  
 20 union breached its duty of fair representation. *Chauffeurs, Teamsters and Helpers, Local No. 391 v.*  
*Terry*, 949 U.S. 558, 564 (1990). Hendrix cannot sustain a federal claim for breach of the CBA  
 21 against Berkeley Farms because an employer may be held liable for breach of a bargaining  
 22 agreement only if the employee can first show that the union breached its duty of fair  
 23 representation. *Bliesner v. Commc’n. Workers of Am.*, 464 F.3d 910, 913 (9th Cir. 2006) (In  
 24 granting summary judgment to the employer, court held, “In order to prevail in [a hybrid section  
 25 301/duty of fair representation] suit, the plaintiff must show that the union and the employer have  
 26 both breached their respective duties.”) This is so because claims against an employer are  
 27 “inextricably interdependent” with claims against a union. *Vaca v. Sipes*, 386 U.S. 171, 184-186  
 28 (1967); *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 164-165 (1983).

1 Though a plaintiff is not required to sue the union in order to bring a claim against an employer, he  
2 is still required to “carry the burden of demonstrating a breach of duty by the Union.” *DelCostello*,  
3 462 U.S. at 165. “To prevail against either the company or the Union, [plaintiff] must not only  
4 show that [the adverse employment action] was contrary to the [CBA] but must also carry the  
5 burden of demonstrating breach of duty by the Union.” *Hines v. Anchor Motor Freight, Inc.*, 424  
6 U.S. 554, 570-71 (1976) (reversing prior dismissal of the employer pending determination of  
7 whether plaintiffs could maintain an action against their local union for breach of the duty of fair  
8 representation). Nowhere in Hendrix’s Complaint does he even allege any breach by the  
9 Teamsters for failure to represent him, and he cannot remedy this failure now because the statute of  
10 limitations for such a claim has run.

11       Claims arising out of a Union’s alleged violation of its statutory duty of fair representation  
12 are subject to preemption under section 301. *Vaca*, 386 U.S. at 177; *Allis-Chalmers Corp. v.*  
13 *Lueck*, 471 U.S. 202 (1985). Section 301 claims are subject to a six-month statute of limitations.  
14 *DelCostello*, 462 U.S. at 169-172; *Stallcop v. Kaiser Foundation Hosp.*, 820 F.2d 1044, 1049 (9th  
15 Cir. 1987) (affirming the district court’s judgment that the wrongful discharge causes of action  
16 were properly preempted by section 301 and that they were barred by the applicable 6-month  
17 statute of limitations). Hendrix was terminated from employment on or about November 6, 2011.  
18 (RJN ¶¶ 2-3, Tate Dec. ¶¶ 4-5, Exs. 2-3). The statutory period for a section 301 claim begins to run  
19 when a plaintiff is aware the union will not assist him or her in a dispute. *Stallcop*, 820 F.2d at  
20 1049. Therefore, based on his November 6, 2011 termination date, Hendrix was required to bring  
21 an action for the Union’s breach of duty by May 2012. Hendrix raised no such claim.

22       Further, Hendrix has no grounds for any tolling provisions, and therefore any such claim for  
23 breach of the duty of fair representation is barred by the statute of limitations. *Stallcop*, 820 F.2d at  
24 1049-1050 (finding no equitable grounds for tolling and dismissing the action for failure to exhaust  
25 administrative remedies); *Knowles v. Pacific Gas & Electric Co.*, 2008 WL 2705097 \*7-\*8 (N.D.  
26 Cal. 2008) (evaluating equitable estoppel, equitable tolling, and relation back and granting  
27 defendant employer’s motion to dismiss, without leave to amend for failure to state a claim, and as  
28 time-barred). Because Hendrix does not have a viable claim against the Teamsters, his section 301

1 claims against Berkeley Farms must fail. *Id.*, at \*7 (granting dismissal against both the employer  
2 and union and holding that because plaintiffs did not have a viable claim against the union,  
3 plaintiffs' section 301 claims against the employer must fail).

4 **D. Hendrix's First and Third Causes of Action Are Barred by His Failure to**  
**Exhaust His Contractual Remedies.**

5 Hendrix cannot maintain his first or third causes of action against Berkeley because he has  
6 failed to exhaust the grievance procedures as set forth in Article 26 of the CBA, and therefore his  
7 first cause of action is subject to dismissal. “An employee seeking a remedy for an alleged breach  
8 of the collective bargaining agreement between his union and employer must attempt to exhaust  
9 any exclusive grievance and arbitration procedures before he may maintain a suit against his union  
10 or employer . . . .” *O’Sullivan v. Longview Fibre Company*, 993 F. Supp. 743, 747 (N.D. Cal.  
11 1997) (granting employer’s motion for summary judgment and holding (1) that employee’s breach  
12 of contract claim alleging that the employer did not have just cause to discharge him was  
13 preempted by the LMRA; (2) employee was not excused from completing grievance procedures of  
14 the CBA before bringing a breach of contract claim against the employer; and (3) the hybrid action  
15 under the LMRA was governed by a six-month statute of limitations). Before bringing a section  
16 301 claim, “it is settled that the employee must at least attempt to exhaust exclusive grievance and  
17 arbitration procedures established by the bargaining agreement.” *Vaca, supra*, 386 U.S. at 184-  
18 186; *Knowles*, 2008 WL 2705097 at \*7; *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 985-986  
19 (9th Cir. 2007) (affirming dismissal of claims against employer for failure to exhaust  
20 administrative remedies under the CBA and holding: “an employee seeking to vindicate personal  
21 rights under a collective bargaining agreement must first attempt to exhaust any mandatory or  
22 exclusive grievance procedures provided in the agreement”); *United Paperworkers Int’l Union v.*  
23 *Misco, Inc.* 484 U.S. 29, 37 (1987) (“The courts have jurisdiction to enforce collective-bargaining  
24 contracts; but where the contract provides grievance and arbitration procedures, those procedures  
25 must first be exhausted and courts must order resort to the private settlement mechanisms without  
26 dealing with the merits of the dispute.”). An employee “in a position with access to a CBA-  
27 sanctioned grievance procedure cannot state an individual claim for breach of contract under state  
28

1 law. Such a claim is necessarily preempted by § 301.” *Price v. Georgia-Pacific Corp.*, 99 F.  
2 Supp.2d 1162, 1166 (N.D. Cal. 2000).

3 To satisfy the exhaustion requirement and be able to proceed in a lawsuit against an  
4 employer, an employee must allege two things: first, that the employer breached the collective  
5 bargaining agreement, and second, that the labor union breached its duty of fair representation to  
6 the employee. *DelCostello*, 462 U.S. at 165. “Failure to utilize the grievance procedures, or to  
7 invoke them in a timely manner, bars grievants from pursuing remedies in court.” *Carr v. Pacific*  
8 *Maritime Association*, 904 F.2d 1313, 1319 (9th Cir. 1990) (affirming the district court’s grant of  
9 summary judgment on plaintiffs’ claims against various unions and participants in an employment  
10 contract for failure to exhaust grievance procedures). Here, Hendrix has entirely failed to adhere to  
11 the contractual remedies directed by the CBA and therefore his claims are barred.

12 As addressed above, Article 26 of the CBA directs the grievance procedures governing  
13 Hendrix’s employment with Berkeley Farms. Hendrix does not plead, nor can he, that he  
14 exhausted the grievance procedures set forth in Article 26 of the CBA. And, as discussed in the  
15 prior section, because Hendrix failed to plead exhaustion of administrative remedies, Hendrix’s  
16 claims must fail. *Young v. Anthony’s Fish Grottos, Inc.*, 830 F.2d 993, 1002 (9th Cir. 1987).

17       **E. Hendrix’s Second Cause Of Action Also Fails To State A Claim Upon Which**  
18       **Relief Can Be Granted And Thus Must Be Dismissed With Prejudice.**

19       **1.      Hendrix Must Plead Facts Demonstrating That He Has a Plausible Basis**  
20       **for Relief.**

21       The Supreme Court’s decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007),  
22 and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), have clarified a plaintiff’s burden at the pleading stage.  
23 Together, they hold that “[t]o survive a motion to dismiss, a complaint must contain sufficient  
24 factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Twombly*,  
25 550 U.S. at 570, *Iqbal*, 556 U.S. at 678 at 1949 (internal quotation marks omitted). “A claim has  
26 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
27 reasonable inference that the defendant is liable for the misconduct alleged.” *Twombly*, 550 U.S. at  
28 556, *Iqbal*, 556 U.S. at 678. A “sheer possibility that the defendant has acted unlawfully” is  
insufficient. *Twombly*, 550 U.S. at 556, *Iqbal*, 556 U.S. at 678.

1       Moreover, “the tenet that a court must accept as true all of the allegations contained in a  
2 complaint is inapplicable to legal conclusions.” *Twombly*, 550 U.S. at 555, *Iqbal*, 556 U.S. at 678.  
3 Thus, to avoid dismissal at the pleading stage, the complaint must contain well-pleaded *factual*  
4 allegations which plausibly give rise to an entitlement to relief. *Iqbal*, at 1950. “Threadbare  
5 recitals of the elements of a cause of action, supported by mere conclusory statements, do not  
6 suffice.” *Twombly*, 550 U.S. at 555, *Iqbal*, 556 U.S. at 678.

7       The *Twombly* and *Iqbal* decisions prescribe a two-step process for analyzing the sufficiency  
8 of a complaint. First, the court must identify the allegations in the complaint that are not entitled to  
9 the assumption of truth. In particular, the court must disregard “labels and conclusions,” “a  
10 formulaic recitation of the elements of a cause of action,” or “naked assertions devoid of further  
11 factual enhancement.” *Twombly*, 550 U.S. at 555, 557; *Iqbal*, 562 U.S. at 678. Second, the court  
12 must consider the remaining factual allegations in the complaint to determine if they plausibly  
13 suggest an entitlement to relief. Facts that are merely consistent with a defendant’s liability “stop[]  
14 short of the line between possibility and plausibility of entitlement to relief.” *Twombly*, 550 U.S. at  
15 557, *Iqbal*, 562 U.S. at 678 (internal quotation marks omitted). Rather, “factual allegations must  
16 be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. Only  
17 then do they fulfill the requirement of Rule 8(a)(2) of the Federal Rules of Civil Procedure that the  
18 complaint provide the defendant with “fair notice of what the . . . claim is and the grounds upon  
19 which it rests.” *Id.*

20                   **2.      Hendrix’s Intentional Infliction of Emotional Distress Cause of Action  
21                   Fails to Plead Facts Establishing a Plausible Basis for Relief.**

22       In addition to being time barred, as explained above, Hendrix’s second cause of action for  
23 Intentional Infliction of Emotional Distress (“IIED”) fails as a matter of law. The only non-  
24 conclusory allegation in support of this claim is Hendrix’s claim that “Defendants knew of Plaintiff’s  
25 fragile emotional state based on the harassment and the forklift incident.” Plaintiff then alleged  
26 “Defendants through their management and supervisors showed a callous disregard for Plaintiff’s  
27 emotional state and intentionally inflicted anxiety on Plaintiff.”

28                   ///

1 However, to plead a cause of action for IIED, Hendrix must show: (1) extreme and  
2 outrageous conduct that is directed at the plaintiff, (2) the intention to cause, or acting in conscious  
3 disregard of the probability of causing, emotional distress, (3) severe emotional distress, (4) actual  
4 and proximate cause of the emotional distress, and (5) consequential damages caused by the  
5 emotional distress. *Christensen v. Super. Ct.*, 54 Cal. 3d 868, 903–905 (1991). Here, Hendrix does  
6 not plead facts sufficient to establish any of these elements.

**3. Plaintiff Cannot Show that Berkeley Farms' Actions Were Extreme and Outrageous or That He Suffered Emotional Distress.**

The first element of an IIED claim is conduct “so extreme and outrageous ‘as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’” *Alcorn v. Anbro Engineering, Inc.*, 2 Cal. 3d 493, 499 n.5 (1970) (internal quotation omitted). The Restatement provides that “[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress . . . .” Restatement 2d of Torts § 46(1).

15        Here, Hendrix does not allege any facts that would tend to show such “extreme and  
16        outrageous” conduct. Hendrix conclusorily alleges he had a fragile emotional state based on  
17        harassment and a “forklift incident.” (Complaint ¶ 34). Hendrix provides no facts describing the  
18        alleged harassment or the forklift incident. Without more, these acts cannot be regarded as  
19        “atrocious” and “utterly intolerable.” *Alcorn*, 2 Cal. 3d at 499 n.5.

Hendrix also fails to show that he suffered emotional distress. The complaint must plead specific facts that establish severe emotional distress resulting from defendant's conduct. *Michaelian v. State Comp. Ins. Fund*, 50 Cal. App. 4th 1093, 1114 (1996); *see also Bogard v. Employers Casualty Co.*, 164 Cal. App. 3d 602, 617 (1985) (demurrer to IIED cause of action properly sustained where plaintiff "... failed to set forth any facts which indicate the nature or extent of any mental suffering incurred as a result of Employer's alleged outrageous conduct."). In his Complaint, Hendrix fails to allege any facts that he suffered "severe emotional distress," an essential element of the cause of action. Restatement 2d of Torts § 46(1).

28 | //

1           **4.       Hendrix's IIED Claim is Barred by the Exclusivity of the Workers'**  
2           **Compensation Laws.**

3           Hendrix's intentional infliction of emotional distress further fails as a matter of law because  
4           claims for intentional infliction of emotional distress caused by the employer's conduct in  
5           employment actions are subject to the exclusive remedy of the workers' compensation law. Labor  
6           Code § 3200, *et seq.*; *Cole v. Fair Oaks Fire Protection Dist.*, 43 Cal. 3d 148, 159-160 (1987);  
7           *Livitsanos v. Super. Ct.*, 2 Cal. 4th 744, 754 (1992); *Shoemaker v. Myers*, 52 Cal. 3d 1, 25 (1990)  
8           (supervisor's alleged "intentional, malicious and outrageous" conduct was covered by workers'  
9           compensation exclusivity provision, as discipline was part of employment relationship).  
10          Accordingly, Hendrix's second cause of action for intentional infliction of emotional distress,  
11          based on employment-related actions that were "part of the normal risk of employment," should be  
12          dismissed because Hendrix's sole remedy lies within the workers' compensation scheme.

13           **F.       Hendrix's Third Cause of Action is Superfluous and Must be Dismissed.**

14          Besides being time barred, Hendrix's third cause of action for breach of the covenant of  
15          good faith and fair dealing is superfluous to his first cause of action for breach of contract. Under  
16          California law, there is no separate measure of recovery for the implied covenant theory. *Guz v.*  
17          *Bechtel Nat'l Inc.* 24 Cal. 4th 317, 352 (2000). This is because the remedy for breach of an  
18          employment contract includes the covenant of good faith and fair dealing implied in the  
19          employment contract. *Id.* "There is no tort of 'bad faith breach' of an employment contract." *Guz*,  
20          24 Cal. 4th at 352; *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 699–700 (1988). Thus,  
21          Hendrix's third cause of action for breach of the covenant of good faith and fair dealing is  
22          superfluous and there is not additional liability. *Guz*, 24 Cal. 4th at 352; *Careau & Co. v. Security*  
23          *Pac. Business Credit, Inc.*, 222 Cal. App. 3d 1371, 1395 (1991).

24          ///

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1     **IV. CONCLUSION**

2         For all of the foregoing reasons, defendant Berkeley Farms respectfully requests this Court  
3 dismiss Hendrix's Complaint and each cause of action pursuant to FRCP 12(b)(6). Further,  
4 because no amendment to his Complaint will correct Hendrix's pleading deficiencies, Berkeley  
5 Farms requests that such dismissal be granted without leave to amend.

6

7     DATED: August 20, 2014

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

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10      By: /s/ Thomas M. McInerney

Thomas M. McInerney

Jill V. Cartwright

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Attorneys for Defendant  
BERKELEY FARMS, LLC

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1 Thomas M. McInerney CA Bar No. 162055  
tmm@ogletreedeakins.com  
2 Jill V. Cartwright CA Bar No. 260519  
jill.cartwright@ogletreedeakins.com  
3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
Steuart Tower, Suite 1300  
4 One Market Plaza  
San Francisco, CA 94105  
5 Telephone: 415.442.4810  
Facsimile: 415.442.4870

7 Attorneys for Defendant  
BERKELEY FARMS, LLC  
(erroneously sued as BERKELEY FARMS INC.)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

12 CLINTON HENDRIX

13 Plaintiff,

14 | P a g e

15 BERKELEY FARMS INC. and DEAN  
FOODS INC. and DOES 1-100,

**Defendant.**

Case No. 4:14-cv-03659-VC

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF BERKELEY FARMS, LLC'S  
MOTION TO DISMISS**

Date: September 25, 2014  
Time: 10:00 a.m.  
Location: Courtroom 4, 17th Floor

Complaint Filed: July 14, 2014  
Trial Date: Not Set

1           Defendant Berkeley Farms, LLC (erroneously sued as BERKELEY FARMS INC.)  
2 respectfully submits the following Request for Judicial Notice of exhibits offered in support of  
3 Berkeley Farms, LLC's Motion to Dismiss. The Court may take notice of facts that are capable of  
4 accurate and ready determination from sources whose accuracy cannot reasonably be questioned.  
5 Fed. R. Evid. 201(b)(2). Accordingly, Berkeley Farms hereby requests that this Court take judicial  
6 notice of the follow documents pursuant to Federal Rules of Evidence 201:

- 7       1. The collective bargaining agreement between Berkeley Farms and Local Unions 137,  
8           315, 386, 517, 853, and 890 affiliated with the International Brotherhood of Teamsters;  
9           attached as Exhibit 1 to the Declaration of Gennifer Taylor concurrently served with  
10          this Request for Judicial Notice.
- 11      2. Charge of Discrimination No. 846-2012-55720 filed with the U.S. Equal Employment  
12          Opportunity Commission on or about June 14, 2012; attached as Exhibit 2 to the  
13          Declaration of Gennifer Taylor.
- 14      3. Charge of Discrimination No. 846-2012-55720 filed with the U.S. Equal Employment  
15          Opportunity Commission on or about June 19, 2012; attached as Exhibit 3 to the  
16          Declaration of Gennifer Taylor.
- 17      4. Plaintiff Clinton Hendrix's Complaint filed in Alameda County Superior Court, Case  
18          No. HG14732618, which is attached as Exhibit A to Document No. 1 in this Court's  
19          record.

20           A court may take judicial notice of certain documents outside the pleadings when  
21          considering a motion to dismiss pursuant to FRCP 12(b)(6) without converting the motion into a  
22          motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908-909 (9th Cir. 2003).  
23          The court need not accept as true allegations that contradict facts which may be judicially noticed  
24          by the court. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987). Among  
25          documents outside the pleadings that may be considered by the court are the EEOC Charges and  
26          public records. *Gallo v. Regents of the University of California*, 916 F. Supp. 1005, 1007-1008  
27          (S.D. Cal. 1995).

28           Moreover, judicial notice is proper under Federal Rule of Evidence 201 for facts that are

1 not subject to reasonable dispute because they “can be accurately and readily determined from  
2 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2); *Intri-Plex*  
3 *Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007). “The court must take  
4 judicial notice if a party requests it and the court is supplied with the necessary information.” FRE  
5 201(d).

6 Lastly, documents on which a complaint is based, where the contents of that document are  
7 alleged in the complaint, may be attached to a 12(b)(6) motion by the defendants and considered by  
8 the Court. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 (9th Cir. 1990)  
9 (court may consider materials attached to the complaint); *Venture Associates v. Zenith Data*  
10 *Systems Corp.*, 987 F.2d 429, 431 (7th Cir. 1993) (court may consider materials referred to in the  
11 complaint and central to the claim(s)); *Gallo*, 916 F. Supp. at 1007. As the collective bargaining  
12 agreement and the EEOC charges identified above fall into one or more of these categories,  
13 Berkeley Farms respectfully requests the Court take judicial notice of them in considering  
14 defendant’s motion.

15 The Court is also authorized pursuant to Federal Rule of Evidence 201(b) to take judicial  
16 notice of the Complaint filed in this action. *See Crane v. Fargo*, Case No.: CV 13-01932 KAW,  
17 2014 WL 1285177, at \*2 (N.D. Cal. March 24, 2014) (court may take judicial notice of matters of  
18 public record) (citations omitted). Accordingly, Berkeley Farms, LLC requests the Court take  
19 judicial notice of the requested items.

20

21 DATED: August 20, 2014

OGLETREE, DEAKINS, NASH, SMOAK &  
22 STEWART, P.C.

23

By: /s/ Thoms M. McInerney  
24 Thomas M. McInerney  
Jill V. Cartwright

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Attorneys for Defendant  
26 BERKELEY FARMS, LLC

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLINTON HENDRIX,  
Plaintiff,

V.

BERKELEY FARMS LLC, et al.,  
Defendant.

Case No. 14-cv-03659-VC

## **ORDER**

On August 20, 2014, Defendants filed a motion to dismiss. (Docket No. 10). Plaintiff's response was due September 3, 2014. As of the date of this Order, the Court has not received any response (or any other communication) from Plaintiff. Accordingly, Plaintiff is directed to file a response within seven days of this Order, or the case will be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

## **IT IS SO ORDERED.**

Dated: September 16, 2014

**VINCE CHHABRIA**  
United States District Judge

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CIVIL MINUTES

<b>Date:</b> September 25, 2014	<b>Time:</b> 2 minutes	<b>Judge:</b> VINCE CHHABRIA
<b>Case No.:</b> 14-cv-03659-VC	<b>Case Name:</b> Hendrix v. Berkeley Farms LLC	

**Attorney for Plaintiff:** No appearance

**Attorney for Defendant:** Thomas McInerney

**Deputy Clerk:** Kristen Melen

**FTR Recording:** 10:06- 10:08

**PROCEEDINGS:**

Hearing held re Motion to Dismiss.

**ORDER AFTER HEARING:**

For the reasons stated on the record, the Motion to Dismiss is GRANTED with prejudice.

FILED

JAN 26 2016

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 Name and Address Clinton Hendrix  
2 23 Park Circle  
3 Marin City, CA 94965  
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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

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9 Plaintiff/Petitioner )  
10 )  
11 VS. )  
12 )  
13 Defendant/Respondent )  
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Case No. 14-cv-03659-VC

Document Name:

Request to  
ReOpen CASE

Claim involves  
Contract, libel, fraud

Honorable Magistrate,

Statue of limitations has expired. And, I am requesting for an extension of time period because the cause of Action involves a contract, personal injury, libel, Fraud, and other claims.

I have provided you with my medical documents as evidence severe depression from my Qualified Medical Examiner.

I have also provided case summary from State Courts including letter from the attorney that was representing me.

Attorney states he had a Heart Attack and he is always going to the VA hospital for his personals. But he does not withdraw from helping me.

Attorney being misleading... I do not know why case was removed from State Court. Then, place into Federal Court with no attorney representation. Your extension could grant me time for Union Lawyer's to represent me

I Pray that you grant me the mercy of the court for an extension of the time period.  
Please do not allow Berkeley Farms the opportunity to get away with fraud.

Please deny them any argument of statue of limitations.

Thank you,



Clinton Hendrix

01/26/2016

**Richard A. Nolan, M.D., Inc.**

Orthopedic Surgery  
 Psychiatry  
 Family Practice

2100 Otis Drive, Suite B  
 Alameda, CA. 94501

Telephone (510) 523-4040

Richard A. Nolan, M.D.  
 Marina, V. Bulatov, M.D.  
 William Ribeiro, M.D.  
 Robert J. Estis, PAC

August 7, 2012

**RE:** **HENDRIX, Clinton**  
**DOB:** 3/3/69  
**SSN:** xxx-xx-8206

**ORTHOPEDIC CONSULTATION****HISTORY**

Mr. Clinton Hendrix is a 43-year-old, right-hand-dominant unemployed machine operator, who has been seen in this office previously for problems with his left knee. He returns now with problems with anxiety and depression arising out of his loss of work, which occurred on 11/9/11. This consisted of an episode of verbal abuse, followed by aggressive physical action towards him by the superintendent, Mr. Cheung at the Berkeley Farms plant in Hayward, California.

The incident took place in a meeting with the superintendent, safety manager, and filling room crew. Mr. Hendrix was in the meeting, which was over a Cache Creek magazine that he had brought to work and which was in the work area. He found it in the trash can and picked it back out, thinking that another machine operator had thrown it in the trash can. He left it in the work area and was gone from work for two days, and when he came back, he and the other employee had an exchange. The other employee told him he would throw it away again, jesting with him. He went to the meeting which was called. The superintendent had said nothing about it. During the meeting, the superintendent had the magazine behind his back under his coat. They were discussing the work left over from the day shift and what they had to do that night, saying that overtime would be necessary. Mr. Cheung

Richard A. Nolan, M.D., Inc.  
RE: **HENDRIX, Clinton**  
August 7, 2012  
Page 2

then said one more thing and pulled the magazine out from behind his back. The superintendent was shouting with an angry face, "Who does this?" Mr. Hendrix acknowledged that the magazine was his and told the superintendent not to talk to him that way and could they go into the office and discuss it? The superintendent kept yelling. Mr. Hendrix decided to take the magazine, put it in his locker, and go to work. When he took the magazine from the superintendent, the superintendent suddenly yanked it back and continued to make angry gestures, growling at him. Mr. Hendrix reported the incident to Human Resources. When he walked down the hallway, he encountered the superintendent again, who was looking at him with a mean look, and he asked him not to talk to him that way. Unfortunately, he used some profanity. He offered to go home. He was going to send him home, and then he told him, "There's the clock," so he clocked out. When he clocked out, the superintendent told him that he was suspended until further notice.

Seven days later he was called back by the plant manager, Mr. Minchey. At that time he was written up for profanity and for having the magazine. He asked whether anything was going to be done to the superintendent, who was physically threatening him and verbally abusing him, and he was told that he would have to go back on suspension if he wanted anything else done. He subsequently was docked one week's pay. He told his supervisor that he was going to have to go home. He called in from 7/14 to 7/21 each day, saying he was out on stress from Peter Cheung's violence. He returned to work, and then he had to do FMLA. There was a big problem over the FMLA. He eventually was terminated on 11/9/11.

#### **CHIEF COMPLAINT**

Since his termination, he has had anxiety and depression over the threatening that he received and the jeopardy of his work. He has had difficulty coping since that time. He has suffered anxiety over the event and cannot let go. He talks about losing his friends because he cannot let go. His union rep tells him that he is delusional about it. He is feeling very aggressive and feels that he is on the brink of being out of control from this. He called the suicide line that he was feeling suicidal. He has had significant difficulty sleeping. He goes to sleep about 10:00, wakes up at 2:00, and cannot go back to sleep. He has been spending most of the time thinking about how he can get his job back and about how this occurred. He lost his medical insurance and therefore cannot go back to Kaiser. He has not had any medical treatment for this since

Richard A. Nolan, M.D., Inc.  
RE: **HENDRIX, Clinton**  
August 7, 2012  
Page 3

that time. He has been living off his savings. The union was of no help to him. He went to the EEOC, who did a partial investigation but could not complete the investigation at the time and therefore gave him a letter to sue. He is now currently looking for an attorney; however, he still has significant difficulty coping with the anxiety associated with this and depression over the results of it.

He notes that he has taken Remeron for sleep and that the night he made the phone call he called to tell them that he was going to quit dealing with them over this stuff. He had taken a second one and could not sleep, which appears to be an idiosyncratic reaction. He is currently not taking medication. He previously did have one problem with anxiety and depression when he was off work for his left knee surgeries and financial difficulty, due to the duration of the treatment; however, he has had no other problems with it.

#### **MEDICATIONS**

Denies.

#### **ALLERGIES**

Denies.

#### **PREVIOUS MEDICAL ILLNESSES**

Denies.

#### **SURGICAL HISTORY**

Left knee surgery x 5. Vasectomy.

#### **SOCIAL HISTORY**

Single with two children ages 24 and 21.

#### **HABITS**

Alcohol: Two beers a day. Tobacco: 1-1/2 to 2 packs a day with the anxiety. Drugs: Denies.

Richard A. Nolan, M.D., Inc.  
RE: **HENDRIX, Clinton**  
August 7, 2012  
Page 4

#### **EDUCATIONAL LEVEL**

High school diploma from Sunset High School, Hayward, California, 1987.

Chabot Community College; lacking one class from Associate of Arts degree.

#### **EMPLOYMENT HISTORY**

Berkeley Farms six years as machine operator/assembler.

Galgon one year.

Hayward Unified School District as environmental engineer ten years.

#### **PHYSICAL EXAMINATION**

Well-nourished, well-developed, male. Pulse 72, blood pressure right arm 140/98.

During the course of the interview, he became hyperreactive describing the incident, has difficulty maintaining a course of thought, and at times rambles about the incident.

#### **IMPRESSION**

- ⇒ Adjustment reaction with mixed anxiety and depression of mood (309.28).
- ⇒ Major depression, single episode (296.2).

#### **DISCUSSION**

Mr. Hendrix is having difficulty dealing with issues revolving around the incident with Mr. Cheung. Mr. Cheung no longer works at the plant, having been terminated several months after Mr. Hendrix left.

A Notice of Right to Sue (Issued on Request) was provided by the Oakland Local Office, 1301 Clay Street, Suite 1170 N, Oakland, CA 94612. The EEOC Charge Number is 846-2012-55720. The EEOC representative is Michelle Gienger, Investigator. Her telephone number is 510-637-3245. The letter was signed by Kristine A. Jensen, Director, dated 8/6/12. A copy of this was sent to Berkeley Farms at 25500 Clawiter Road, Hayward, CA 94545.

Richard A. Nolan, M.D., Inc.  
RE: **HENDRIX, Clinton**  
August 7, 2012  
Page 5

Recommendations for Mr. Hendrix are to begin psychological counseling. We contacted Dr. Salais's office and put down the charges for him.

Cymbalta 30 mg will be taken one q.d. as an antidepressant. He will make certain he reads the brochure before taking the medication.

Mr. Hendrix has not been able to return to work since this incident began, having been terminated on 11/9/11 secondary to the entire incident and the anxiety reaction to this. He remains TTD until 9/30/12 to allow Dr. Salais to have a further handle on the situation to control the symptoms. Reevaluation will occur in two weeks to assess the Cymbalta.

**PLAN**

- Psychotherapy with Dr. Joseph Salais.
- Cymbalta 30 mg q.d.
- Bring copy of the incident to review and add to the chart.
- RTC in two weeks unless there is an acute problem—then he will return sooner.

It is noted that Mr. Hendrix lives across the street from the office and has easy access to the office.

Richard A. Nolan, M.D.

RAN/mn

**Progress Notes**

Hendrix, Clinton

Patient ID: HENCL000

DOB: 03/03/1969

Age: 46 years Gender: M

03/24/2014

**Date:** 03/24/14 : 11:25am**Title:** OFFICE VISIT - Left Knee Pain**Patient:** Clinton Hendrix**Date of Birth:** 03/03/69**DOI:** 11/9/2011**Mechanism of Injury:** private**Insurance Carrier:** Private Pay**SUBJECTIVE:**

This 45 year old male presents today with a chief complaint of Left Knee Pain.

**PROB 1: Depression**

Duration: chronic since injury on 11/9/2011

Quality: depression

Frequency: constant

Severity: Least: 8/10 Worst: 10/10

Causing Sleeplessness?: yes several times per night

Alleviating factors: go for walks

**Current Medications:** Per Chart**Medication Allergies:** Per Chart**DISCUSSION:**

Mr. Hendrix continues with depression and anxiety, precipitated by being suspended from his place of employment. He has been dealing with these issues since 11/09/2011. He is followed by Dr. Salais for psychological counseling and continues the use of Cymbalta 30 mg per day. He continues commonsense precautions in all activities while making an attempt to reorganize his life.

**PLAN:**

Continue activities to tolerance.

Continue current medications.

Continue follow up with Dr. Salais.

Return to clinic as needed.

He is released to regular work effective 03/24/2014.

# SIGNED BY Robert E Estis, PAC (RJE) 03/31/2014 05:08PM

**Progress Notes**

Hendrix, Clinton

Patient ID: HENCL000

DOB: 03/03/1969

Age: 46 years Gender: M

10/22/2015

**Date:** 10/22/15 : 02:16pm**Title:** OFFICE VISIT - Depression**Patient:** Clinton Hendrix**Date of Birth:** 03/03/69**DOI:** 11/9/2011**Mechanism of Injury:** private**Insurance Carrier:** Private Pay**SUBJECTIVE:**

This 46 year old male presents today with a chief complaint of depression. He continues at a low activity level, living with his mother and working around the house, trying to organize his life. He still has difficulty making decisions regarding how he is going to do it.

**Current Medications:** Denies**Medication Allergies:** NKDA, except mosquito bites on back, last year & this year. He lives in Marin City in a country environment.**DISCUSSION:**

We discussed with him his current situation. He has gone and gotten an attorney to help him with the potential workers' comp aspect of his case; however, that is strictly potential with no certainty involved in it.

He has been online looking for work but has not found anything that he is willing to commit to. He has several options; however, he has difficulty committing to those. He has worked through employment agencies and for different companies and has established a good relationship with one food company; however, he is not certain that he can get back on there. He denies difficulty sleeping at night; however, he does have difficulty maintaining his concentration during the day hours. He was given a prescription on his first visit for an antidepressant; however, he did not fill it because he did not have the money. He does not remember the name, once again verifying his indecisiveness.

Following discussion, he is of the opinion that his depression is further controlled without the use of the medication. He feels that he is capable of returning to work and that he can interact with his fellow workers and take direction from the supervisors without getting agitated, irritable, or difficult to deal with. At this time he may be released to his usual and customary work activities for 10/26/15.

He still has the Wellbutrin prescription, which he can fill, getting reimbursement from his previous employer if he decides to move forward with this.

**WORK STATUS:**

Released to regular work 10/26/15.

**Progress Notes**

Hendrix, Clinton

Patient ID: HENCL000

DOB: 03/03/1969

Age: 46 years Gender: M

10/22/2015

**PLAN:**

Consider Wellbutrin SR 150.

Released to regular work activities as of 10/26/15.

RTC in six weeks, or sooner if necessary.

# SIGNED BY Richard A Nolan, MD (RAN) 10/23/2015 04:17PM

**Progress Notes**

Hendrix, Clinton

Patient ID: HENCL000

DOB: 03/03/1969

Age: 46 years Gender: M

10/22/2015

Date: 10/22/15 : 02:16pm

Title: OFFICE VISIT - Depression

**Patient:** Clinton Hendrix**Date of Birth:** 03/03/69**DOI:** 11/9/2011**Mechanism of Injury:** private**Insurance Carrier:** Private Pay**SUBJECTIVE:**

This 46 year old male presents today with a chief complaint of depression. He continues at a low activity level, living with his mother and working around the house, trying to organize his life. He still has difficulty making decisions regarding how he is going to do it.

**Current Medications:** Denies

**Medication Allergies:** NKDA, except mosquito bites on back, last year & this year. He lives in Marin City in a country environment.

**DISCUSSION:**

We discussed with him his current situation. He has gone and gotten an attorney to help him with the potential workers' comp aspect of his case; however, that is strictly potential with no certainty involved in it.

He has been online looking for work but has not found anything that he is willing to commit to. He has several options; however, he has difficulty committing to those. He has worked through employment agencies and for different companies and has established a good relationship with one food company; however, he is not certain that he can get back on there. He denies difficulty sleeping at night; however, he does have difficulty maintaining his concentration during the day hours. He was given a prescription on his first visit for an antidepressant; however, he did not fill it because he did not have the money. He does not remember the name, once again verifying his indecisiveness.

Following discussion, he is of the opinion that his depression is further controlled without the use of the medication. He feels that he is capable of returning to work and that he can interact with his fellow workers and take direction from the supervisors without getting agitated, irritable, or difficult to deal with. At this time he may be released to his usual and customary work activities for 10/26/15.

He still has the Wellbutrin prescription, which he can fill, getting reimbursement from his previous employer if he decides to move forward with this.

**WORK STATUS:**

Released to regular work 10/26/15.

**Progress Notes**

Hendrix, Clinton

**Patient ID:** HENCL000

**DOB:** 03/03/1969

**Age:** 46 years **Gender:** M

10/22/2015

**PLAN:**

Consider Wellbutrin SR 150.

Released to regular work activities as of 10/26/15.

RTC in six weeks, or sooner if necessary.

# SIGNED BY Richard A Nolan, MD (RAN) 10/23/2015 04:17PM



Case 3:14-cv-03659-VC Document 21 Filed 02/03/16 Page 2 of 2

United States District Court  
Northern District of California

1  
2  
3  
4 CLINTON HENDRIX,  
5 Plaintiff,

6 v.  
7  
8 BERKELEY FARMS LLC, et al.,  
9 Defendants.

10 Case No. 14-cv-03659-VC

11  
12 **CERTIFICATE OF SERVICE**

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
14 District Court, Northern District of California.

15 That on February 3, 2016, I SERVED a true and correct copy(ies) of the attached, by  
16 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
17 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
18 receptacle located in the Clerk's office.

19 Clinton Hendrix  
20 23 Park Circle  
21 Sausalito, CA 94965

22 Dated: February 3, 2016

23 Susan Y. Soong  
24 Clerk, United States District Court

25  
26 By:   
27 Kristen Melen, Deputy Clerk to the  
28 Honorable VINCE CHHABRIA

## Exhibit B

1 Your Name: Clinton Hendrix

2 Address: 23 Park Circle Sausalito CA 94965

3 Phone Number: (415) 595 - 8289

4 Fax Number: \_\_\_\_\_

5 E-mail Address: \_\_\_\_\_

6 Pro Se Plaintiff

**FILED**

FEB 13 2018

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**MEJ**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**CV 18 935**

Teamsters 853

Clinton Hendrix

Plaintiff,

vs.

Berkeley Farms Inc

Dean Foods

Case Number [leave blank]

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Yes  No

Defendant.

**PARTIES**

1. Plaintiff. [Write your name, address, and phone number. Add a page for additional plaintiffs.]

Name: Teamsters 853  
 Address: 7750 Pardee Oakland CA 94621  
 Telephone: (510) 265-3330

COMPLAINT

PAGE    OF    [JDC TEMPLATE - Rev. 05/2017]

-2-

## 2. Defendants. [Write each defendant's full name, address, and phone number.]

1 Defendant 1:

2 Name:

Berkeley Farms Inc and Dean Foods

94545

3 Address:

25500 Chawter RD Hayward CA

4 Telephone:

(510) 265 - 8600

7 Defendant 2:

8 Name:

---

9 Address:

---

10 Telephone:

---

12 Defendant 3:

13 Name:

---

14 Address:

---

15 Telephone:

---

## 17 JURISDICTION

18 [Usually only two types of cases can be filed in federal court, cases involving "federal questions" and cases involving "diversity of citizenship." Check at least one box.]

## 19 3. My case belongs in federal court

20  under federal question jurisdiction because it involves a federal law or right.21 [Which federal law or right is involved?] Labour Management  
Relations23  under diversity jurisdiction because none of the plaintiffs live in the same state as any of the  
24 defendants and the amount of damages is more than \$75,000.

25 COMPLAINT

26 PAGE \_\_\_\_ OF \_\_\_\_ [JDC TEMPLATE – Rev. 05/2017]

27

28

## 1 VENUE

2 [The counties in this District are: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin,  
 3 Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo, or  
 4 Sonoma. If one of the venue options below applies to your case, this District Court is the correct  
 place to file your lawsuit. Check the box for each venue option that applies.]

5 4. Venue is appropriate in this Court because:

- a substantial part of the events I am suing about happened in this district.
- a substantial part of the property I am suing about is located in this district.
- I am suing the U.S. government, federal agency, or federal official in his or her official capacity and I live in this district.
- at least one defendant is located in this District and any other defendants are located in California.

## 12 INTRADISTRICT ASSIGNMENT

13 [This District has three divisions: (1) San Francisco/Oakland (2) San Jose; and (3) Eureka. First write in the county in which the events you are suing about happened, and then match it to the correct division. The San Francisco/Oakland division covers Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Sonoma counties. The San Jose division covers Monterey, San Benito, Santa Clara, Santa Cruz counties. The Eureka division covers Del Norte, Humboldt, Lake, Mendocino counties, only if all parties consent to a magistrate judge.]

14 5. Because this lawsuit arose in Alameda County, it should be  
 15 assigned to the Oakland Division of this Court.  
 16

## 21 STATEMENT OF FACTS

22 [Write a short and simple description of the facts of your case. Include basic details such as where  
 23 the events happened, when things happened and who was involved. Put each fact into a separate,  
 numbered paragraph, starting with paragraph number 6. Use more pages as needed.]

24 Breach of Contract,  
 25 Intentional Infliction of Emotional  
 26 Distress, Breach of Covenant Good  
 27 Fair Faith & Fair Dealings  
 28 Assault & Battery      Forklift Accident

COMPLAINT

PAGE \_\_\_\_ OF \_\_\_\_ [JDC TEMPLATE – Rev. 05/2017]

-1-

1                  . Defective Parts

2  
3 Since 2011 Clinton Hendrix has  
4 been on disability cause by  
5 Berkeley Farms. And, now seek  
6 Special & General damages on  
7 all actions according to proof.

8  
9 Both Berkeley Farms Management  
10 & Teamsters 853 will be served.  
11 The U. Teamsters will represent with  
12 attorney.

13 I must serve both parties.

14 \_\_\_\_\_

15 \_\_\_\_\_

26 //

27 //

28 COMPLAINT

PAGE \_\_\_\_ OF \_\_\_\_ [JDC TEMPLATE - Rev. 05/2017]

1 CLAIMS  
23 First Claim  
4(Name the law or right violated: Wrongful Termination)(Name the defendants who violated it: Berkeley Farms)[Explain briefly here what the law is, what each defendant did to violate it, and how you were  
harmed. You do not need to make legal arguments. You can refer back to your statement of facts.]

November 9, 2011 Berkeley Farms  
Unlawfully Terminated Clinton Hendrix  
because of work-related Injuries.

1) Robbin Rusberry 2nd degree  
ASSault & battery  
Events witness Safety Manager & Union

2) Defective Forklift  
Moving Accident w/ Injuries

COMPLAINT

PAGE \_\_\_\_ OF \_\_\_\_ [JDC TEMPLATE - 05/17]

-6-

Claim

(Name the law or right violated: Robbery assault & battery)  
(Name the defendants who violated it: Peter Cheung)

June 6, 2011

Clenton Hendrix Person & Property  
was giving Superintendent Peter  
Cheung excessive force & grievance.  
Terrorizing Clenton Hendrix in front  
of Safety Manager, Quality Control  
Manager, Two Supervisors, Three  
Foremen, along with union workers -  
I tried to settle his grievance by  
retrieving Personal Property &  
placing property in locker.

Peter Cheung strong arm me  
out my personal property. And,  
waving threaten demeanor & posture  
demonstrating strengths of  
martial arts.

It was scared for  
my life.

I thought he was going  
to beat me up.  
All witness's agree.

COMPLAINT

PAGE \_\_\_\_ OF \_\_\_\_ [JDC TEMPLATE - 05/17]

-7-

## **DEMAND FOR RELIEF**

[State what you want the Court to do. Depending on your claims, you may ask the Court to award you money or order the defendant to do something or stop doing something. If you are asking for money, you can say how much you are asking for and why you should get that amount, or describe the different kinds of harm caused by the defendant.]

**DEMAND FOR JURY TRIAL**

[Check this box if you want your case to be decided by a jury, instead of a judge, if allowed.]

Plaintiff demands a jury trial on all issues.

Respectfully submitted,

Date: 2/13/18 Sign Name: Clinton Hendrix  
Print Name: Clinton Hendrix

## **COMPLAINT**

PAGE    OF    [JDC TEMPLATE - 05/17]

JS-CAND 44 (Rev. 6/6/17)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS** *Teamster 553*(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)*Alameda*

(c) Attorneys (Firm Name, Address, and Telephone Number)

**DEFENDANTS** *Berkeley Farms INC  
and Deans Foods*County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY) *Dallas, TX*NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant	4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen of Another State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Foreign Nation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	375 False Claims Act
120 Marine	310 Airplane	365 Personal Injury – Product Liability	422 Appeal 28 USC § 158	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability		423 Withdrawal 28 USC § 157	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	367 Health Care/Pharmaceutical Personal Injury Product Liability	710 Fair Labor Standards Act	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	368 Asbestos Personal Injury Product Liability	720 Labor/Management Relations	430 Banks and Banking
151 Medicare Act	340 Marine	PERSONAL PROPERTY	740 Railway Labor Act	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	370 Other Fraud	751 Family and Medical Leave Act	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	371 Truth in Lending	790 Other Labor Litigation	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	380 Other Personal Property Damage	791 Employee Retirement Income Security Act	480 Consumer Credit
190 Other Contract	362 Personal Injury -Medical Malpractice	385 Property Damage Product Liability	IMMIGRATION	490 Cable/Sat TV
195 Contract Product Liability			462 Naturalization Application	850 Securities/Commodities/ Exchange
196 Franchise			465 Other Immigration Actions	890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		891 Agricultural Acts
210 Land Condemnation	440 Other Civil Rights	HABEAS CORPUS	870 Taxes (U.S. Plaintiff or Defendant)	893 Environmental Matters
220 Foreclosure	441 Voting	463 Alien Detainee	871 IRS-Third Party 26 USC § 7609	895 Freedom of Information Act
230 Rent Lease & Ejectment	442 Employment	510 Motions to Vacate Sentence		896 Arbitration
240 Torts to Land	443 Housing/ Accommodations	530 General		899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	445 Amer. w/Disabilities- Employment	535 Death Penalty		950 Constitutionality of State Statutes
290 All Other Real Property	446 Amer. w/Disabilities-Other	OTHER		
	448 Education	540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee- Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding	2 Removed from State Court	3 Remanded from Appellate Court	4 Reinstated or Reopened	5 Transferred from Another District (specify)	6 Multidistrict Litigation-Transfer	8 Multidistrict Litigation-Direct File
-----------------------	----------------------------	---------------------------------	--------------------------	---	-------------------------------------	--

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

*Breach of contract, Forklift accident w/ 3rd party ~~HARASSMENT~~*

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.CHECK YES only if demanded in complaint:  
**JURY DEMAND:** Yes No**VIII. RELATED CASE(S), IF ANY** (See Instructions): JUDGE DOCKET NUMBER**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**  
(Place an "X" in One Box Only) *+ SAN FRANCISCO/OAKLAND* *SAN JOSE* *EUREKA-MCKINLEYVILLE*

DATE

SIGNATURE OF ATTORNEY OF RECORD

*Chris Henry*

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - (1) **United States plaintiff.** Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) **United States defendant.** When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) **Federal question.** This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) **Diversity of citizenship.** This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
  - (1) **Original Proceedings.** Cases originating in the United States district courts.
  - (2) **Removed from State Court.** Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) **Remanded from Appellate Court.** Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) **Reinstated or Reopened.** Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) **Transferred from Another District.** For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) **Multidistrict Litigation Transfer.** Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) **Multidistrict Litigation Direct File.** Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. **Brief Description:** Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23. **Demand.** In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. **Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLINTON HENDRIX,

Plaintiff,

V.

BERKELEY FARMS INC,

Defendant.

Case No. 18-cv-00935-MEJ

## **ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Maria-Elena James . When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Plaintiffs or removing parties must file a consent or declination to proceed before a magistrate judge within 14 days of the filing of the complaint or the removal. All other parties must file a consent or declination within 14 days of appearing in the case. All parties who have made an appearance must file a consent or declination within 7 days of the filing of a dispositive motion or the case will be reassigned to a district court judge. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

This case may fall within the Pilot Program for Initial Discovery Protocols for Employment Cases Alleging Adverse Action. See General Order 71. Parties and Counsel are directed to review General Order 71 to determine whether it applies to this case, and to comply with that General Order if applicable. Parties and Counsel should note that if General Order 71 applies, it supersedes certain obligations set out in the schedule below.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients

1 shall familiarize themselves with that rule and with the material entitled "Dispute Resolution  
2 Procedures in the Northern District of California" on the Court ADR Internet site at  
3 <http://www.cand.uscourts.gov/adr>. A limited number of printed copies are available from the  
4 Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

5 IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties  
6 the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District  
7 Of California", additional copies of which can be downloaded from the court's Internet website:  
8 <http://www.cand.uscourts.gov>.

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United States District Court  
Northern District of California

<b>CASE SCHEDULE – ADR MULTI-OPTION PROGRAM</b>		
<b>Date</b>	<b>Event</b>	<b>Governing Rule</b>
2/13/2018	Complaint Filed	
4/26/2018	*Last day to: • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR L.R.3-5
	• file ADR Certification signed by Parties and Counsel (form available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )	Civil L.R . 16-8(b) & ADR L.R. 3-5(b)
	• file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference <a href="http://www.adr.cand.uscourts.gov">http://www.adr.cand.uscourts.gov</a> (form available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )	Civil L.R . 16-8(c) & ADR L.R. 3-5(b)
5/10/2018	Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement (also available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )	FRCivP 26(a) (1) Civil L.R . 16-9
5/17/2018	INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 10:00 AM in:  Courtroom B, 15th Floor Phillip Burton Federal Building 450 Golden Gate Avenue San Francisco, CA 94102	Civil L.R . 16-10

\* If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.

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4 CLINTON HENDRIX,  
5 Plaintiff,  
6 v.  
7 BERKELEY FARMS INC., et al.,  
8 Defendants.  
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10 Case No. 18-cv-00935-MEJ  
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13 ORDER GRANTING PLAINTIFF'S  
14 APPLICATION TO PROCEED IN  
15 FORMA PAUPERIS & FOR  
16 REASSIGNMENT  
17

18 REPORT & RECOMMENDATION  
19

20 INTRODUCTION  
21

22 On February 13, 2018, Plaintiff Clinton Hendrix filed a Complaint and an Application to  
23 Proceed In Forma Pauperis. Compl., Dkt. No. 1; Appl., Dkt. No. 3. A district court may authorize  
24 the start of a civil action in forma pauperis if the court is satisfied that the would-be plaintiff  
25 cannot pay the filing fees required to pursue the lawsuit. *See* 28 U.S.C. § 1915(a)(1). Plaintiff  
submitted the required documentation demonstrating he is unable to pay the costs of this action,  
and it is evident from the Application that his assets and income are insufficient to enable him to  
pay the fees. *See* Appl. Accordingly, the Court **GRANTS** Plaintiff's Application to Proceed In  
Forma Pauperis.

26 However, as no party has consented to the jurisdiction of a United States Magistrate Judge  
27 pursuant to 28 U.S.C. § 636(c), the Clerk of Court shall **REASSIGN** this case to a District Judge,  
with the recommendation that the Complaint be **DISMISSED WITHOUT LEAVE TO  
AMEND.**

28 SUA SPONTE SCREENING UNDER 28 U.S.C. § 1915(e)(2)

A. Legal Standard

While the Court has granted Plaintiff's Application to Proceed In Forma Pauperis, it must

1 also review Plaintiff's Complaint to determine whether the action may be allowed to proceed. The  
2 Court must dismiss the Complaint if it is frivolous, fails to state a claim upon which relief can be  
3 granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C.  
4 § 1915(e)(2)(B). To make this determination, courts assess whether there is a factual and legal  
5 basis for the asserted wrong, "however inartfully pleaded." *Franklin v. Murphy*, 745 F.2d 1221,  
6 1227-28 (9th Cir. 1984) (quotation omitted). Pro se pleadings are liberally construed. *Erickson v.*  
7 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Moreover, the Ninth Circuit has "repeatedly held  
8 that a district court should grant leave to amend even if no request to amend the pleading was  
9 made, unless it determines that the pleading could not possibly be cured by the allegation of other  
10 facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Unless it is clear that no amendment  
11 can cure the defects of a complaint, a pro se plaintiff proceeding in forma pauperis is entitled to  
12 notice and an opportunity to amend before dismissal. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th  
13 Cir. 1987).

14 **B. Allegations in the Complaint**

15 Plaintiff appears to allege he is suing on behalf of Teamsters 853. Compl. at 1 (naming  
16 only "Teamsters 853" as plaintiff); *id.* at 4 ("Both Berkeley Farms Management & Teamsters 853  
17 will be served. Then, Teamsters will represent with Attorney. I must serve both parties."). He  
18 names as Defendants in the caption Berkeley Farms Inc. and Dean Foods. Compl. at 2. He  
19 alleges his case belongs in federal court because it involves the Labor Management Relations Act  
20 (LMRA). *Id.*

21 In his statement of facts, Plaintiff lists the following: "Breach of contract, intentional  
22 infliction of emotional distress, breach of covenant [of] good faith and fair dealing[], assault and  
23 battery, forklift accident, defective parts." *Id.* at 3-4. He alleges he has been on disability since  
24 2011, and that his disability was caused by Berkeley Farms. *Id.* at 4. Under a claim entitled  
25 "wrongful termination," he alleges that Berkeley Farms unlawfully terminated him in November  
26 2011 because of work-related injuries. *Id.* at 5. He also alleges "robbery 2nd degree, assault &  
27 battery" based on "events witness[ed by] safety manager & union." *Id.* He names as a defendant  
28 to the robbery, assault and battery claims Peter Chewing, who was Superintendent. Chewing used

1 excessive force and terrorized Hendrix in front of others on June 6, 2011; he also took Hendrix's  
2 personal property. *Id.* at 6. Plaintiff was scared for his life. *Id.* Plaintiff includes no further  
3 allegations to describe the factual basis for his claims.

4 **C. Analysis and Screening**

5 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that the complaint set forth a  
6 "short and plain statement of the claim showing the pleader is entitled to relief." Rule 8(d)(1)  
7 requires that each allegation in a pleading be "simple, concise, and direct." *See McHenry v.*  
8 *Renne*, 84 F.3d 1172, 1177, 1179 (9th Cir. 1996) (affirming dismissal of complaint that was  
9 "argumentative, prolix, replete with redundancy, and largely irrelevant"). In addition, the  
10 complaint must include facts which are "more than labels and conclusions, and a formulaic  
11 recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S.  
12 554, 555 (2007). For instance, in *Ashcroft v. Iqbal*, the Supreme Court rejected conclusory  
13 assertions that "petitioners 'knew of, condoned, and willfully and maliciously agreed to subject  
14 [him] to harsh conditions of confinement 'as a matter of policy, solely on the account of [his]  
15 religion, race, and/or national origin and for no legitimate penological interest.'" 556 U.S. 662,  
16 680 (2009). The Court reasoned that such allegations were akin to the "formulaic recitation of the  
17 elements" dismissed in *Twombly*, and therefore, insufficient to meet Rule 8(a). *Id.* In doing so,  
18 the Court explained, "[a] claim has facial plausibility when the plaintiff pleads factual content that  
19 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
20 alleged." *Id.* at 678.

21 1. No Federal Claims Stated

22 Plaintiff alleges he disputes several decisions made by his former employer, and that he  
23 experienced a threatening incident at the hands of his former superintendent, but he fails to allege  
24 facts sufficient to state a claim under the LMRA, 29 U.S.C. §§ 141-197; the Americans with  
25 Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*; or any other federal law that the undersigned  
26 can discern might be involved on the basis of the allegations in the Complaint.

27 Plaintiff has not alleged any facts suggesting the existence of an LMRA claim. Though he  
28 purports to sue on behalf of Teamsters 853, he does not allege he is in fact a member of that union.

1 Plaintiff also does not allege his employer was subject to a collective bargaining agreement, or that  
2 his employer(s) violated any term(s) of a collective bargaining agreement. He does not allege a  
3 union took or failed to take any steps to represent him in connection with his termination or with  
4 the superintendent, and thus does not state a claim under Section 301 of the LMRA, 29 U.S.C. §  
5 185. Furthermore, to pursue such a claim, Plaintiff must allege he exhausted his administrative  
6 remedies through the union's grievance procedure (*Ortiz v. Permanente Med. Grp., Inc.*, 2013 WL  
7 1748049, at \*3 (N.D. Cal. Apr. 23, 2013)); he has not done so. Plaintiff also does not allege how  
8 he has standing to bring this action on behalf of Teamsters Local 853, to the extent that is what  
9 Plaintiff is attempting to do. As a pro se party, he also cannot represent the Teamsters. *See Simon*  
10 *v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) ("It is well established that the privilege  
11 to represent oneself pro se provided by [28 U.S.C.] § 1654 is personal to the litigant and does not  
12 extend to other parties or entities."); *Kendall v. United States*, 541 F. App'x 781 (9th Cir. 2013)  
13 ("[N]on-attorney pro se litigants have no authority to represent anyone other than themselves.").

14 Title I of the ADA prohibits private employers from discriminating against job applicants  
15 and employees based on disability. *See* 42 U.S.C. §§ 12101 *et seq.* Plaintiff alleges that he has  
16 been on disability since 2011, but does not allege he was otherwise qualified to perform his job  
17 when he was terminated, and he only conclusorily alleges that he was terminated in 2011 because  
18 of his disability or because of "work-related injuries." *See generally Nunes v. Wal-Mart Stores,*  
19 *Inc.*, 164 F.3d 1243 (9th Cir. 1999).

20 Moreover, Plaintiff fails to allege he exhausted his administrative remedies with respect to  
21 any ADA claim. "The ADA requires individuals alleging employment discrimination to file a  
22 claim with the Equal Employment Opportunity Commission (EEOC) before filing a lawsuit. This  
23 requirement may be fulfilled by filing a claim with a state agency that has a worksharing  
24 agreement with the EEOC, which allows the state agency to be the agent of the EEOC for the  
25 purpose of receiving charges." *Johnson v. Cty. of Monterey*, 2011 WL 250429, at \*3 (N.D. Cal.  
26 Jan. 26, 2011) (internal quotation marks and citations omitted). An ADA claim must be filed with  
27 the EEOC (or the worksharing state agency) within 180 days of the last act of alleged  
28 discrimination. *See Scheck v. Cal. Nurses Ass'n & Healthcare Empls. Union*, 2010 WL 3835728,

1 at \*2 (N.D. Cal. Sept. 28, 2010). A Plaintiff may file an ADA lawsuit within 90 days of receiving  
2 a right-to-sue letter from the EEOC or a state agency that has a worksharing agreement with the  
3 EEOC. *See Johnson*, 2011 WL 250429, at \*3.

4       2.     No State Law Claims Stated

5       Each of Plaintiff's state-law claims is based on events occurring in 2011 and is time  
6 barred. *See Cal. Civ. Proc. Code § 335.1* (two-year statute of limitation for actions for assault,  
7 battery, or personal injury), § 337 (four-year statute of limitation for actions upon written  
8 contract), § 339 (two-year statute of limitation for action based on oral contract), § 343 (where the  
9 Code does not specify a statute for a specific claim, four-year statute of limitation will apply).

10      3.     No Claims Stated Against Dean Foods

11       Plaintiff does not allege any facts pertaining to Dean Foods, does not name Chewing as a  
12 defendant, does not identify Chewing's employer, and does not allege how either of the named  
13 Defendants is liable for Chewing's actions. Based on pleadings filed in other actions (*see infra*), it  
14 appears Plaintiff has named Dean Foods as a defendant because it is Berkeley Farms' parent  
15 company.

16      4.     Res Judicata

17       Plaintiff previously sued Berkeley Farms and Dean Foods. *See Hendrix v. Berkeley*  
18 *Farms*, Case No. 14-cv-3659 VC (*Hendrix I*).<sup>1</sup> Plaintiff alleged that Dean Foods was Berkeley  
19 Farms' parent company and combined them as defendants. *Hendrix I* Compl. at 1, *Hendrix I* Dkt.  
20 No. 1; *see also* Disclosure Stmt., Dkt. No. 1-3 ("[D]efendant Berkeley Farms, LLC certifies that  
21 Dean Holding Company is the ultimate parent corporation of Berkeley Farms, LLC"). There is no  
22 indication Plaintiff served Dean Foods in that case. In *Hendrix I*, Plaintiff alleged he had filed  
23 grievances with the HR Manager at Berkeley Farms against his supervisor, Peter Cheung.  
24 *Hendrix I* Compl. One grievance was about an unsafe forklift, another was for being harassed by

25  
26      <sup>1</sup> On July 17, 2015, Plaintiff also filed another case against Berkeley Farms: *Hendrix v. Berkeley*  
27 *Farms*, Case No. 15-cv-3329 KAW (*Hendrix II*). The Complaint in *Hendrix II* includes more  
28 detailed allegations regarding some of the same events that appear to be at issue in this action; it  
also attaches the Right to Sue Notice the EEOC sent Plaintiff on August 6, 2012. Plaintiff  
voluntarily dismissed that action. *See* Case No. 15-cv-3329, Dkt. No. 1 (Compl.); Dkt. No. 5  
(Voluntary Dismissal).

Cheung to the point that Plaintiff was forced to resign under protest. Plaintiff alleged Cheung's harassment and threatening behavior caused Plaintiff emotion distress, which required him to seek medical help and take Family Medical Leave. Plaintiff alleged Berkeley Farms' subsequent termination of Plaintiff violated his employment contract. He asserted claims for breach of contract, intentional infliction of emotional distress, and breach of the covenant of good faith and fair dealing. Plaintiff received a right to sue letter from the California Department of Fair Employment and Housing on or about November 5, 2013. *Id.* at Ex. A.

Berkeley Farms LLC removed *Hendrix I* to this Court on August 13, 2014, on the ground that Section 301 of the LMRA preempted Plaintiff's state law claims. Not. of Removal, *Hendrix I* Dkt. No. 1. Berkeley Farms moved to dismiss Plaintiff's complaint in *Hendrix I* on numerous grounds. In relevant part, Defendant argued Plaintiff's intentional infliction of emotion distress and breach of the covenant of good faith and fair dealing claims were barred by the two-year statute of limitations applicable to personal injury claims; that his wrongful termination claims were preempted by Section 301 of the LMRA because deciding these claims would require the court to interpret the collective bargaining agreement in place; and that he had not alleged the union breached its duty of fair representation and any such claim was barred by the applicable 6 month statute of limitations. See Mot. to Dismiss, *Hendrix I* Dkt. No. 10-1.

When Plaintiff failed to respond to the motion to dismiss, failed to respond to an order to show cause, and failed to appear at the hearing on the motion to dismiss, the District Judge dismissed his case with prejudice. Order of Dismissal, *Hendrix I* Dkt. No. 15. Judge Chhabria subsequently denied Plaintiff's motion to remand (Dkt. Nos. 18-19), and his motion to reopen the case (Dkt. Nos. 20-21).

"Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). The doctrine is applicable whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *Id.* The claims Plaintiff asserted in *Hendrix I* are identical to the claims he asserts here: breach of contract and breach of the covenant of good faith and fair dealing based upon Plaintiff's

1 termination, and intentional infliction of emotional distress based on Chewing’s assault and  
2 battery, the forklift accident, and defective forklift parts. Judge Chhabria’s dismissal with  
3 prejudice for failure to prosecute is an adjudication upon the merits for the purposes of res  
4 judicata. *See Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001)  
5 (dismissal with prejudice based upon failure to prosecute “[u]nless otherwise specified . . .  
6 ‘operates as an adjudication upon the merits’” (quoting Fed. R. Civ. P. 41(b))). There is identity  
7 between the parties: Plaintiff and Berkeley Farms were parties in both actions. Accordingly,  
8 Plaintiff’s claims against Berkeley Farms in this action are barred by res judicata because he either  
9 previously brought them or could have brought them in *Hendrix I*.

## **5. Summary**

11       Based on the foregoing analysis, the undersigned RECOMMENDS dismissing the  
12 Complaint. The Ninth Circuit has adopted a liberal standard for granting pro se plaintiffs leave to  
13 amend; however, leave to amend need not be granted where it would constitute an exercise in  
14 futility. *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994); *see also Rosati v.*  
15 *Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not dismiss a pro se  
16 complaint without leave to amend unless it is absolutely clear that the deficiencies of the  
17 complaint could not be cured by amendment.” (internal quotation marks and citation omitted)).  
18 Because the state-law claims Plaintiff asserts in the Complaint are time-barred and because any  
19 claims against Berkeley Farms relating to the termination of his employment or the incident(s)  
20 with Chewing are barred by res judicata, the undersigned further recommends that the dismissal be  
21 without leave to amend.

## **CONCLUSION**

23       Based on the analysis above, the Court **GRANTS** the Application to Proceed In Forma  
24 Pauperis. As Plaintiff did not yet consent to the jurisdiction of a United States Magistrate Judge  
25 pursuant to 28 U.S.C. § 636(c), the Clerk of Court shall **REASSIGN** this case to a District Judge,  
26 with the recommendation that the Complaint be **DISMISSED WITHOUT LEAVE TO**  
27 **AMEND.**

1 Pursuant to Federal Rule of Civil Procedure 72, any party may serve and file objections to  
2 this Report and Recommendation within 14 days after being served.

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4 Dated: February 22, 2018

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6 MARIA-ELENA JAMES  
United States Magistrate Judge

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United States District Court  
Northern District of California

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4 CLINTON HENDRIX,  
5 Plaintiff,

6 v.  
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8 BERKELEY FARMS INC., et al.,  
9 Defendants.  
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11 Case No. 18-cv-00935-MEJ (INT)  
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**ORDER REASSIGNING CASE**

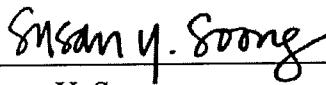
13 GOOD CAUSE APPEARING THEREFORE,

14 IT IS ORDERED that this case is reassigned to the Honorable Haywood S. Gilliam, Jr. in  
15 the Oakland division for all further proceedings. Counsel are instructed that all future filings shall  
16 bear the initials HSG immediately after the case number.

17 All hearing and trial dates presently scheduled are vacated. However, existing briefing  
18 schedules for motions remain unchanged. Motions must be renoticed for hearing before the judge  
19 to whom the case has been reassigned, but the renoticing of the hearing does not affect the prior  
20 briefing schedule. Other deadlines such as those for ADR compliance and discovery cutoff also  
21 remain unchanged.

22 Dated: February 23, 2018

FOR THE EXECUTIVE COMMITTEE

23  
24   
25 Susan Y. Soong  
26 Clerk, United States District Court  
27  
28

A true and correct copy of this order has been served by mail upon any pro se parties.

United States District Court  
Northern District of California

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4 CLINTON HENDRIX,  
5 Plaintiff,

6 v.  
7  
8 BERKELEY FARMS INC., et al.,  
9 Defendants.

10 Case No. 18-cv-00935-HSG  
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12  
13 **CLERK'S NOTICE SETTING A CASE  
14 MANAGEMENT CONFERENCE**

15 Notice is hereby given that a Case Management Conference has been set for May 22, 2018,  
16 before Judge Haywood S. Gilliam, Jr., at 2:00 p.m., in Courtroom 2, 4th Floor, 1301 Clay Street,  
17 Oakland, CA. Case Management Statement due by May 15, 2018. Standing orders can be  
18 downloaded from the court's web page at [www.cand.uscourts.gov/judges](http://www.cand.uscourts.gov/judges).

19 Dated: 2/26/2018

20 Susan Y. Soong  
21 Clerk, United States District Court

22  
23 By: \_\_\_\_\_  
24 Nikki D. Riley, Deputy Clerk to the  
25 Honorable HAYWOOD S. GILLIAM, JR.  
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Case 4:18-cv-00935-HSG Document 7 Filed 02/26/18 Page 2 of 2

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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

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CLINTON HENDRIX,  
Plaintiff,

7

v.

8

BERKELEY FARMS INC., et al.,  
Defendants.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
District Court, Northern District of California.

11

That on February 26, 2018, I SERVED a true and correct copy(ies) of the attached, by  
placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
receptacle located in the Clerk's office.

12

13

Clinton Hendrix  
23 Park Circle  
Sausalito, CA 94965

14

15

Dated: February 26, 2018

16

17

Susan Y. Soong  
Clerk, United States District Court

18

19

20

By: \_\_\_\_\_  
Nikki D. Riley, Deputy Clerk to the  
Honorable HAYWOOD S. GILLIAM, JR.

21

22



United States District Court  
Northern District of California

1  
2  
3  
4 CLINTON HENDRIX,  
5 Plaintiff,

6 v.  
7  
8 BERKELEY FARMS INC., et al.,  
9 Defendants.

10 Case No.18-cv-00935-HSG  
11

12 **CERTIFICATE OF SERVICE**

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
14 District Court, Northern District of California.

15 That on 3/12/2018, I SERVED a true and correct copy(ies) of the **ORDER (Docket No.**  
16 **8)**, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter  
17 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-  
18 office delivery receptacle located in the Clerk's office.

19 Clinton Hendrix  
20 23 Park Circle  
21 Sausalito, CA 94965

22 Dated: 3/12/2018

23 Susan Y. Soong  
24 Clerk, United States District Court

25 By: \_\_\_\_\_  
26 Nikki D. Riley, Deputy Clerk to the  
27 Honorable HAYWOOD S. GILLIAM, JR.

## Exhibit C

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):** and

BERKELEY FARMS INC., DEAN FOODS INC., TEAMSTERS 853  
and Does 1 to 100

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
CLINTON HENDRIX

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**ENDORSED**  
**FILED**  
**ALAMEDA COUNTY**

MAR 05 2018

CLERK OF THE SUPERIOR COURT  
By TANIA PIERCE, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede declarar en su contra sin escuchar su versión. Lea la Información e continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): **SUPERIOR COURT OF ALAMEDA**  
1225 FALLON STREET, OAKLAND, CA 94612

CASE NUMBER:  
(Número del Caso):

*Rg18895498*

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**CLINTON HENDRIX 23 PARK CIRCLE, SAUSALITO, CA 94965**

DATE: (Fecha)	MAR - 6 2018	Chad Finkle	Clerk, by (Secretario)	TANIA PIERCE	, Deputy (Adjunto)
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(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): *Berkeley Farms, Inc.*

under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)

4.  other (specify):

4.  by personal delivery on (date):

1 E  
2  
3 S  
4 Attorney for Defendants  
5  
6  
7  
8 ENDORSED  
9 FILED  
10 ALAMEDA COUNTY  
11 MAR 05 2018  
12 CLERK OF THE SUPERIOR COURT  
13 By \_\_\_\_\_ Deputy  
14 TANIA PIERCE

15 SUPERIOR COURTOF THE STATE OF CALIFORNIA  
16 COUNTY OF ALAMEDA

17 Unlimited Jurisdiction

18 CLINTON HENDRIX

Case No. RG18895498  
~~██████████~~

19 Plaintiff

20 V  
21 BERKELEY FARMS INC  
And DEAN FOODS INC,

Complaint for unlawful termination in  
violation of contract, harassment and  
infliction of emotional distress

22 Teamsters 853 and Does 1-100  
Defendants

Forklift Accident ✓

23 RIGHT TO SUE LETTER

24 On November 5, 2013, The State of California, Department of Fair Employment &  
Housing issued it's final Right to sue letter. See attached Exhibit A. Which is a true and  
correct copy of the Right to Sue Letter.

25 Comes now Plaintiff Clinton Hendrix hereinafter, Plaintiff, with a civil complaint against  
Berkeley Farms. Berkeley Farms is a corporation doing business in the State of California  
County of Alameda with address at 25500 Clawiter Rd, Hayward CA94545. Dean Foods  
Inc is Berkeley Farms parent company based on the paychecks received by Plaintiff in the  
past. Herein after Berkeley Farms and Dean Foods Inc are combined as Defendants.

26 Therefore, venue is Alameda County Superior Court. The Does 1-100 are sued as

27 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 fictional entities, and when and if true names of persons or corporations are discovered  
2 those names will be substituted for the Does.

3                   FACTS COMMON TO ALL CAUSES OF ACTION

4 1. Clinton Hendrix, hereinafter Plaintiff, had previously a grievance against Supervisor  
5 Peter Cheung a supervisor with Berkeley Farms. Plaintiff had previously filed two  
6 grievances with the Human Resources Manager at Berkeley Farms. One grievance was  
7 about an unsafe forklift incident in where the forklift lost its counterweight, something  
8 the plant manager and the safety-manager blamed in part on Plaintiff. Plaintiff had prior  
9 to the incident always operated the forklift in a safe and efficient manner. Plaintiff  
10 maintains that management unjustifiably blamed Plaintiff on something that was out of  
11 his control. The bolts holding the counterweight broke and caused Plaintiff to have a  
12 moving accident. The incident created in Plaintiff stress and anxiety. Into this situation  
13 and after Plaintiff was further harassed by Supervisor Chung, a severe anxiety developed  
14 in Plaintiff.

15 2. 1) Plaintiff filed a grievance in writing in where he stated, that he was harassed by a  
16 supervisors at Berkeley Farms. One allegation was that Plaintiff operated a fork-lift in an  
17 unsafe manner, something in which Plaintiff denies; and another statement by Plaintiff  
18 was one of harassment against Supervisor Peter Cheung in which eventually forced  
19 Plaintiff to resign under protest by calling over the phone in frustration and stating "I.  
20 Quit".

21 3. None of these written complaints of harassment were addressed by Berkeley Farms in  
22 compliance with Article 26 of the Corporation's employment agreement to with "Settlement of Disputes." As part of the harassment Peter Cheung had lifted his arm in a  
23 threatening manner such that Mr. Hendrix felt threatened by Mr. Cheung's demeanor,  
24 posture and verbalization.

25 4. The anxiety inflicted on Plaintiff by a Berkeley Farms Supervisor's behavior over the  
26 alleged forklift incident and over the threatening behavior by supervisor Cheung required

27  
28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 Mr. Hendrix to seek medical help and take Family Medical leave.

2 5. In fact Berkeley Farm knew that Mr. Hendrix was in need of professional counseling  
3 based on the anxiety caused by Peter Cheung and managements in their handling of the  
4 forklift incident and harrassment. See attached Exhibit B which is a true and correct  
5 copy of a document received by Plaintiff prior to his termination.

6 | 6. Berkeley Farms claims That Mr. Hendrix called and said "I quit".

7   7. Nobody denies that Plaintiff showed up to work the very next day and clocked in as  
8   normal and went to work. In fact, he showed the whole world by his action that he had  
9   not quit when he called in and stated "I quit" over the phone. Plaintiff was clearly  
10   venting his frustration, but by his act and actions, he clearly showed he had not quit by  
11   clocking in and starting to work.

12 8. Berkeley Farms never followed Article 26 of its "Settlement of Disputes", but merely  
13 terminated Mr. Hendrix in a manner not consistent with its own employment agreement.

### **First cause of Action**

### **(Breach of Employment Contract)**

16 9. The allegations set forth in Paragraphs 1 through 9 are re-alleged and incorporated  
17 herein by reference.

18 10 Stated in Article 26 of the "employment agreement" an employee can expect  
19 grievances to be handled in a fair and equitable manner.

## **ARTICLE 26, SETTLEMENT OF DISPUTES**

11. "Section 1. Step 1- All grievances of employees and disputes relating to the  
application, and enforcement of this Agreement, shall be referred initially by the  
employee and or shop steward to the employees' immediate supervisor or manager."  
12. "Step 2 - if after five (5)business days the matter is not settled under the foregoing  
procedure, the matter shall be referred in writing by the employee and or shop steward to  
the Plant Manager, or Distribution Manager and the Human Resource Manager. The  
written referral to Step 2 shall state the nature of the dispute and the remedy sought using

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 the agreed upon form with copies served on the parties involved. Grievances filed under  
2 Article 5 shall be filed at Step 2. The Union may be represented by any of its officers,  
3 agents or other authorized persons, and the employer may be represented by its  
4 management personnel or other persons. The Step 2 grievance meeting shall be held  
5 within five (5) days of written notice of the referral, unless mutually agreed otherwise.  
6 Every effort shall be made to resolve differences at this level. Within five (5) days after  
7 the Step 2 grievance meeting the responding party shall serve the grieving party with a  
8 written response to the grievance, and if denied, setting forth the reasons."

9 13. "Section 2. In the event grievances or disputes are not settled within five (5) days  
10 under the foregoing procedure, the matter may be referred to a Board of Adjustment. All  
11 such unresolved issues shall be in writing with copies to be served on the parties  
12 involved. The Union may be represented by any of its officers, agents or other authorized  
13 persons, and the Employer may be represented by its management personnel or other  
14 authorized persons. Every effort shall be made to resolve differences at this level.

15 Section 3. The Board of Adjustment shall be composed of two (2) representatives of the  
16 Company and two (2) representatives of the Union. No such representative shall be a  
17 direct employee of the Company or of the Union involved in the dispute. A Chairman and  
18 Secretary shall be designated from among the panel."

19 //

20 14. During the entire course of plaintiff's employment with defendants, there existed an  
21 express and implied-in-fact employment contract between plaintiff and defendants that, at  
22 the time of plaintiff's discharge, included but was not limited to, the following terms and  
23 conditions:

24 A. Plaintiff would be able to continue his employment with defendant indefinitely as long  
25 as he carried out his duties in a proper and competent manner and paid his union dues;  
26 B. Plaintiff would not be demoted, discharged, or otherwise disciplined, nor would  
27 plaintiff's job functions be reassigned for other than good cause .....

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 15. The alleged unsafe forklift operation should have resulted in retraining in company  
2 adopted safe practices and not leave Plaintiff with stress and anxiety. Improper forklift  
3 procedure if at all, should not have resulted in termination, but in retraining. The forklift  
4 "Counterweight" falling off shows unsafe equipment and not the ultimate responsibility  
5 of Plaintiff. It may be of note that Plaintiff has operated forklifts at Berkeley Farms for  
6 several years without incidents.

7 16. This employment contract was evidenced by various written documents,  
8 commendations, oral representations to plaintiff by defendants' agents and employees,  
9 and the parties' entire course of conduct, including the following as evidence by the  
10 employment handbook and Article 26 which Heading is "settlement of disputes".

11 17. A. Defendants' written personnel policies and discipline procedures are as stated in  
12 Article 26 Settlement of Disputes; and should thus have been followed.

13 18. B. The existence of an established policy with the defendant company, which was  
14 known to and relied on by plaintiff, that an employee such as plaintiff, who had  
15 performed service for Berkeley Farms for six years as a good and faithful employee,  
16 would have secure employment with defendants; that an employee such as plaintiff would  
17 not be discharged without good and sufficient cause and be afforded retraining and  
18 counseling when needed; that an employee such as plaintiff with a grievance or complaint  
19 lodged against him, would be provided a meaningful opportunity to respond and improve;  
20 and that an employee such as plaintiff would not be demoted, discharged, or disciplined  
21 without good and sufficient cause and would not otherwise have his job functions taken  
22 away or reassigned.

23 19. C. Throughout his employment, plaintiff was told by his superiors, that he was  
24 doing a satisfactory job except by Supervisor Peter Cheung. Plaintiff worked there for  
25 six years until Supervisor Cheung gave Plaintiff grief.

26 20. As a result of the above representations, plaintiff came reasonably to expect and to  
27 rely on the promise of job security and good and fair treatment. Such statements and acts

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 by defendants communicated to plaintiff the idea that he had performed satisfactorily  
2 until his interaction with Supervisor Cheung which cost Plaintiff great anxiety and need  
3 of medical counseling. Plaintiff in good faith relied on these representations of good and  
4 fair treatment and believed them to be true.

5 21. Plaintiff's reliance on, belief in, and acceptance in good faith of all the assurances,  
6 promises, and representations as listed in the preceding paragraphs led him to believe that  
7 his employment was secure and that there existed a contract of continuous employment  
8 with defendants. As independent consideration, in addition to performing his regular  
9 duties as an employee of defendant, plaintiff refrained from seeking other employment  
10 and pursuing other career opportunities while he was able to be re-trained without  
11 suffering from the stress and anxiety and there was still a need of his skills.

12 22.. Plaintiff understood and duly performed all conditions of the contract to be  
13 performed by him.

14 23. Plaintiff has at all times been ready, willing, and able to perform and has offered  
15 to perform all the conditions of this contract to be performed by him.

16 27. Despite the representations made to Plaintiff and the reliance Plaintiff placed on  
17 them, Defendants failed to carry out their responsibilities under the terms of the  
18 employment contract and breached the contract in the following ways:

19 By not following the Union Grievance Procedures and The employment Handbook.  
20 Plaintiff should have received counseling as the stress created in Plaintiff were in fact  
21 caused directly and indirectly by Defendants. Plaintiff should have been given any  
22 necessary forklift retraining to company standards if management decided that was  
23 necessary. The failure of Defendants to make Plaintiff understand that the  
24 "Counterweight" incident was beyond Plaintiff's control would have alleviated some  
25 anxiety and stress.

26 ///

27 ///

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

The company and Defendants failed by:

2 28. A. Subjecting plaintiff to different standards from those set for other employees:

3 29. B. Terminating plaintiff's employment without cause and for reasons that have  
4 nothing to do with legitimate business justification, despite the past (Six Years)  
5 satisfactory job performance.

6 30. C Failing to follow their own written personnel policies or to apply the same  
7 personnel policies to plaintiff that they apply to other employees.

8 31. D. Failing and refusing to place plaintiff in alternative positions while he had stress  
9 and counseling issues that were available and for which plaintiff was qualified.

10 32. As a proximate result of defendants' breach, plaintiff has suffered and continues to  
11 suffer substantial losses in earnings, bonuses, and other employment benefits that he  
12 would have received had defendants not breached said agreement, including but not  
13 limited to expenses incurred in obtaining substitute employment, all to his damage in an  
14 amount according to proof.

## **SECOND CAUSE OF ACTION**

**(Intentional Infliction of Emotional Distress)**

18 33. The allegations set forth in Paragraphs 1 through 32 are re-alleged and incorporated  
19 herein by reference.

20 | 34. Defendants knew of Plaintiff's fragile emotional state based on the harassment and  
21 | the forklift incident.

22 | 35. Defendants through their management and supervisors showed a callous disregard  
23 | for Plaintiff's emotional state and intentionally inflicted anxiety on Plaintiff.

24 Wherefore Plaintiff prays for Judgment as stated below.

25

26 | 111

27 //

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

**THIRD CAUSE OF ACTION**  
**(Breach of the Covenant of Good Faith and Fair Dealing)**

4 36. The allegations set forth in Paragraphs 1 through 35 are re-alleged and incorporated  
5 herein by reference.

6 37. Plaintiff's employment agreement with defendants contained an implied covenant of  
7 good faith and fair dealing by which defendants, and each of them, promised to give full  
8 cooperation to plaintiff in his employment performance and to refrain from doing any act  
9 that would prevent or impede plaintiff from performing all conditions of his employment  
10 or any act that would prevent or impede plaintiff's enjoyment of the fruits of his  
11 employment. Specifically, the covenant of good faith and fair dealing required defendants  
12 to fairly, honestly, and reasonably perform the terms and conditions of the employment  
13 agreement.

14 38. Plaintiff, as an individual employee, was in an inherently unequal bargaining position  
15 in his dealings with Defendants. In addition, Plaintiff entrusted his entire livelihood to  
16 Defendants' willingness to perform their obligations under the terms of employment, and  
17 he suffering grates harm;. Defendants were aware of plaintiff's vulnerability in the regard  
18 and need of medical counseling due to the anxiety brought on by management and  
19 Supervisor Chung.

20 39. Defendants' termination of plaintiff's employment was wrongful, in bad faith,  
21 arbitrary, and unfair, and done to frustrate his enjoyment of the contract's actual benefits,  
22 in breach of said covenant, in that plaintiff was terminated on the pretext that just cause  
23 existed to discharge him, when defendants knew that there was no just cause. Plaintiff had  
24 not quit. Plaintiff was discharged for reasons extraneous to the employment agreement,  
25 without good or sufficient cause, in violation of defendants' policy to deal consistently  
26 and fairly with its employees, and for the purpose of frustrating plaintiff's enjoyment of  
27 the benefits of his employment with Defendants. Further, Defendants breached the

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

## Verification

2 I Clinton Hendrix having reviewed the facts as stated in this complaint find them true and  
3 correct to the best of my memory and recollection. Under penalty of perjury under the laws  
4 of the State of California I affirm the facts true and correct to the best of my recollection  
5 and memory.

Date: 2/22/15

By:

Clinton Hendrix

28 Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress

1 covenant by:

2 40. A. Subjecting plaintiff to different standards from those expected of employees;  
3 41. B. Terminating plaintiff's employment without cause and for reasons that have  
4 nothing to do with legitimate business justification, despite satisfactory job performance.  
5 42. C. Failing to follow their written personnel policies or to apply the same personnel  
5 policies to plaintiff that it applies to other employees.  
6 43. D. Failing and refusing to place plaintiff in alternative positions that were available  
7 and for which plaintiff was qualified.

8

9 PRAYER FOR RELIEF

10 WHEREFORE, plaintiff prays for judgement against defendants as follows:

11 (1) To be reinstated with back-pay and seniority  
12 (2) For compensatory damages including lost wages, lost employee benefits, bonuses,  
13 vacation benefits, and other special and general damages according to proof on each  
14 cause of action;  
15 (3) For mental and emotional distress on the First and Second Cause of Action;  
16 (4) For punitive damages on the First and Second Cause of Action;  
17 (5) For an award of attorney fees on the First and Second Cause of Action;  
18 (6) For an award of interest, including pre-judgment interest, at the legal rate;  
19 (8) For an award to plaintiff of the costs of suit incurred herein on all causes of action;  
20 and  
21 (9) For such other and further relief as this court deems just and proper.

22

23

24

2/20/18 —

By \_\_\_\_\_



25

26 Attorney for Plaintiff

27

28

Complaint for unlawful termination  
in violation of contract, harassment and infliction of  
emotional distress